

# **U.S. INTELLIGENCE AGENCIES AND ACTIVITIES: RISKS AND CONTROL OF FOREIGN INTELLIGENCE**

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## **HEARINGS BEFORE THE SELECT COMMITTEE ON INTELLIGENCE U.S. HOUSE OF REPRESENTATIVES NINETY-FOURTH CONGRESS FIRST SESSION**

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**NOVEMBER 4, 6, DECEMBER 2, 3, 9, 10, 11, 12, AND 17, 1975**

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### **PART 5**

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**TUESDAY, NOVEMBER 4, 1975**

**HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
Washington, D.C.**

The committee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Dellums, Aspin, Hayes, Milford, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Sandra Zeune, James C. Mingee, Roger Carroll, and Charles Mattox, investigators.

Chairman PIKE. The committee will now proceed with its scheduled hearing for today, which relates to certain procurement practices of the CIA. Our witnesses from the Agency are Mr. John Blake, the Deputy Director for Administration, Mr. Carl Duckett, the Deputy Director for Science and Technology, and Mr. William Nelson, the Deputy Director for Operations.

### **STATEMENTS OF JOHN BLAKE, DEPUTY DIRECTOR, ADMINISTRATION, CARL DUCKETT, DEPUTY DIRECTOR, SCIENCE & TECHNOLOGY, WILLIAM NELSON, DEPUTY DIRECTOR, OPERATIONS, CIA; ACCOMPANIED BY MITCHELL ROGOVIN, SPECIAL COUNSEL, DIRECTOR OF CENTRAL INTELLIGENCE**

Mr. ROGOVIN. Mr. Chairman, we believe that it would be most effective if the three Deputy Directors would respond directly to questions of the committee. There are no opening statements.

Chairman PIKE. There are no opening statements at all?

Mr. ROGOVIN. That is correct.

Chairman PIKE. Well, you catch me a little aback. Maybe the staff has some questions for us. Go ahead, Mr. Rogovin.

Mr. ROGOVIN. Mr. Chairman, we are quite anxious to have these witnesses testify in open session to the fullest extent that they can. When we get to areas where the answers are best given in executive session, the witness will respond in that fashion.

Chairman PIKE. I quite understand. I only caution the witnesses not to leave any documents on the table when they leave.

I think we will go right into this. I don't know which of the three witnesses we should properly address this question to. I think perhaps Mr. Duckett would be the best person to respond:

Some time ago there was quite a lot of publicity about Central Intelligence Agency contracts with colleges and universities. Was not a directive put out, or at least a statement made, by the President of the United States to the effect that such contracts would be discontinued?

Mr. DUCKETT. Mr. Chairman, I have not looked at that language recently so I answer from memory. But our interpretation—and I think it was understood by the President—was that we would no longer contract with the universities except when a senior official, usually the president of the university, was aware of the relationship and approved it. We have followed that procedure since that time.

Chairman PIKE. And in your judgment, that procedure does comply with the spirit and letter of the Presidential directive?

Mr. DUCKETT. Yes, sir; that was certainly our interpretation at that time. We made a very conscious decision as to how we would follow procedures thereafter.

I should point out to the committee that our procedures have always included a very specific approval channel to Mr. Blake, who acts in behalf of the Director for any such contract before it is let, by which I or someone else would certify that in fact the university officials were aware of and had approved the relationship.

Chairman PIKE. Who drew up the Agency's guidelines for contracting with colleges and universities?

Mr. DUCKETT. The guidelines were drafted by Mr. Blake's predecessor. I believe at that time it would have been Mr. Bannerman. He drafted those in consultation with all of the other Deputy Directors, including myself.

They were then submitted, as was the practice at that time, to our Deputy Director or Comptroller—a position which no longer exists—and then were specifically approved by the Director.

Chairman PIKE. Is there any provision in your directives which requires these activities to be approved by any higher level official than the Director of the Central Intelligence Agency?

Mr. DUCKETT. No, Mr. Chairman, there is no such provision. We did not consider that to be required under the directive that we received. That is not to say we have not had discussions at various times as to these relationships. But there was not a provision for approval at any higher level than the Director.

Chairman PIKE. The fact of the matter is, then, that, at the present time, the Central Intelligence Agency is contracting with colleges and universities?

Mr. DUCKETT. Yes; we are, Mr. Chairman. I don't have the exact number in mind. We provided it to your staff. It is a small number of universities in which we have current ongoing programs.

Chairman PIKE. Do any of these contracts pertain to secret programs?

Mr. DUCKETT. Yes, sir. Classified work is involved in some of these contractual relationships.

Chairman PIKE. Do any of these contracts pertain to covert operations?

Mr. DUCKETT. I would try to answer in this way, Mr. Chairman: Certainly none of these have any direct relationship to covert opera-

tions. I would want to look more directly at the specific language of the contracts before I said that there was no possibility that anything resulting from these contracts might have application to covert operation. However, that is not their prime objective.

Chairman PIKE. Is any of the financial assistance covert—not revealed, in other words?

Mr. DUCKETT. No, sir. I think that was the point I was trying to make. It is not necessarily made public, but it is certainly not covert from the university itself. That was the specific change we made in our procedure. Nonetheless, that does not mean these programs are made public.

Chairman PIKE. Who is it made known to in the university, besides the person who has the contract?

Mr. DUCKETT. We have not tried to define a title, Mr. Chairman, because as you are well aware, many universities have different administrative structures. What we have said is that the contract has to be made known to a senior responsible official of that university.

In most cases that means the president.

Chairman PIKE. My time has expired.

Mr. Dellums, are you ready to ask some questions?

Mr. DELLUMS. Yes.

Thank you, Mr. Chairman.

We know that the CIA paid for stationery to assist President Nixon in answering letters on the Cambodian invasion. My first question is: Has the CIA ever paid for a gift for an American Chief Executive; and, if so, would you explain please?

Mr. DUCKETT. I believe Mr. Blake would be the appropriate one to answer.

Mr. BLAKE. Congressman Dellums, to the best of my knowledge, the answer to your question is no.

Mr. DELLUMS. Has the CIA ever paid for military assistance to a foreign nation, and, if so, was this aid authorized by Congress?

Mr. BLAKE. I think it might be appropriate if I asked Mr. Nelson to comment, sir.

Mr. NELSON. I would say, Mr. Dellums, in the sense of formal military assistance to a foreign country, the answer is no.

Mr. DELLUMS. I am aware there are great subtleties and nuances in the use of words. When you say "formal military assistance," what do you mean?

Mr. NELSON. I would have to explain that, Mr. Dellums, in executive session. I'm very sorry, but the details are classified.

Mr. DELLUMS. All right, I will ask that in executive session.

Has the CIA ever assisted the head of a foreign government with purchases; and, if so, explain under what authority and the nature of the purchase.

Mr. NELSON. Again, Mr. Dellums, that is a subject we would have to discuss in executive session.

Mr. DELLUMS. Thank you.

Has the CIA ever appropriated funds for the purchase of weapons—including small arms—for use in covert operations?

Does the CIA keep a store of such weapons, and have weapons been provided to foreign nationals?

Mr. NELSON. If I could answer that in a general sense, Mr. Dellums, the Agency does have a paramilitary responsibility under the directives we have received from the National Security Council. Under those particular directives, we are required, in maintaining this capability, to maintain some stock of arms in the event they are needed abroad.

Mr. DELLUMS. Does a CIA chief of station have expense money for entertainment?

Mr. NELSON. The answer to that is yes.

Mr. DELLUMS. For what things has the money been used? Can you give us examples?

In the process of answering that, would you also tell me who accounts for the money, what limits are set, and whether there have been any abuses, in your estimation, of the use of these entertainment funds by chiefs of station?

Mr. NELSON. If we are discussing purely entertainment funds, which I believe is your question, the money is used to entertain foreign officials with whom our people abroad are in contact. The limitation on those funds is set for each chief of station in a specific letter he receives from the Director. The accounting for such funds is made in the normal accounting channels, duly audited by the auditing part of the Agency, and is accounted for in that fashion.

Mr. DELLUMS. Would you explain the 1932 Economy Act and whether under it, for example, the CIA could buy a helicopter for \$100 from the Defense Department? Does the CIA use the act regularly?

Mr. BLAKE. My understanding of the operation of the Economy Act to which you refer is that it can best be described as a piece of legislation which allows one Federal agency, buying in quantities at discount prices, to accept requests from other agencies for the same item, so that the unit price is the lowest possible price because of the volume buying.

If I understand you correctly, when you mention the matter of buying a helicopter from the Department of Defense for \$100, it is my understanding that that would be an interagency property transfer, as opposed to a matter of going to the private sector under the Economy Act on behalf of the Government and buying items in volume at the lowest unit price.

Mr. DUCKETT. I would like to add to that answer, if I may. There possibly is some confusion here. For various experimental purposes and other reasons, we do get surplus equipment which has been declared surplus and is considered of no value. We pay no money for that. So we do receive equipment in that category, but that is a very common practice throughout the Government.

Mr. DELLUMS. Well, that has obvious ramifications. If you project a budget figure for the entire intelligence community or for the CIA, and if you have the capability under the 1932 Economy Act, doesn't that distort the budget figures you would present? Under the 1932 Economy Act, you have an enormous potential for gathering massive amounts of equipment at much lower than a going rate.

Mr. DUCKETT. I'm afraid you misunderstood my comment. I mentioned that we did do this sort of thing for experimentation. We are very concerned about experimental activities and therefore we are

interested in vehicles that might be used in that type of experimentation. In no way am I discussing vehicles that would be used in an operational sense. That is not the reason we use them.

Chairman PIKE. The gentleman's time has expired

Mr. McClory.

Mr. McCLORY. I would like to ask questions in a different area which I am sure both the committee and the American public want to know about. There is such mystery about the use of American funds in covert operations overseas. I would like you to explain how you finance that kind of an operation.

Is it done through the use of cash? Is there any auditing at the overseas station and is there any verification by the Central Intelligence Agency here at Langley that would confirm the manner in which funds are utilized at an overseas operation?

Mr. NELSON. If I may try to address myself to that question, Mr. McClory, a rather long chain of approvals occurs here. One must start out with the Agency budget which, of course, is presented to Congress as any other agency budget is, and voted upon. In that budget, there are various funds allocated to various parts of the Agency, including funds allocated to the Operations Directorate, of which I am the Deputy Director. Once money is allocated to us, we then apportion this money out on the basis of specific approvals to each operating division and in turn to each overseas station.

The expenditure of funds overseas is authorized on the basis of approvals by a division chief here in Washington who approves specific money that is spent abroad. This money is then expended on the authority and signature of a station chief abroad and is audited by our auditors in the same fashion that any other Government agency is audited.

Mr. McCLORY. Now, I assume we sometimes expend money which is delivered to foreign nationals, to informants, or persons who are co-operating with our CIA or CIA agents who are foreign nationals. How are we able to verify the receipt of that money? Are we not obligated to simply take the word of our CIA agent who is operating overseas?

You really have to take him at his word, don't you?

Mr. NELSON. The situation varies in different cases, Mr. McClory, but in most cases, we ask for a signed receipt from the individual involved. If a signed receipt is not possible, then one goes on the testimony and the affidavit of a responsible officer who actually hands the money to the person abroad.

He certifies that he has expended this money for an authorized purpose.

Mr. McCLORY. Now, with respect to expense accounts, you just have to take the word of the CIA foreign agent, don't you?

Mr. NELSON. Are you talking about an expense account for one of our officers?

Mr. McCLORY. I'm talking about the entertainment expense accounts. You would have to take his word for that, wouldn't you?

Mr. NELSON. If it is an entertainment expense account for one of our officers, he is asked to bring in a receipt and show how he spent the money.

Mr. McCLODY. How often do we audit these accounts?

Mr. NELSON. I think the average cycle is once every year for each station.

Mr. McCLODY. What would you say to having the GAO make spot audits of each operation? You would not have any objection to that, would you?

Mr. NELSON. No, sir. If there were a way to provide some compartmentation within the GAO, it is entirely possible that the GAO could audit our expenses.

By law, we have been exempt from GAO audits in the past.

Mr. McCLODY. I assume that one of the important recommendations of this committee will be the establishment of some kind of a joint congressional oversight committee. That joint oversight committee then would want to have a mechanism by which expenditures of the CIA could be audited and verified. In that connection, the GAO might be able to help implement that kind of a recommendation.

Mr. NELSON. I could only urge in that respect that, if it were done, it be done on a basis that it involved a relatively small group within GAO. We have again the problem of leaks, and the widespread dissemination of very sensitive information within the larger body.

Chairman PIKE. The gentleman's time has expired.

Mr. Aspin.

Mr. ASPIN. I would like to yield my time to Mr. Dellums.

Chairman PIKE. Is there any objection?

All right, Mr. Dellums.

Mr. DELLUMS. Has the CIA funded research programs in behavior modification and were any of these programs carried out in institutions?

Mr. DUCKETT. The answer is yes, we have; but I would not be able to go into detail except in executive session.

Mr. DELLUMS. Are there significant numbers of personnel in the Department of Defense who are, in fact, working for the Agency?

What I am trying to get at here is accountability.

Mr. DUCKETT. We, indeed, have some people assigned to the Pentagon who are working on joint programs. But they are certainly accounted for on our payroll and they are known to the Defense Department—who they are and what they are doing—because it is a joint endeavor.

Mr. DELLUMS. Another question that goes to tracking funds: Does the CIA finance and task major reconnaissance operations?

Mr. DUCKETT. Again, I would have to discuss that in executive session, Mr. Dellums. That is a very sensitive matter.

Mr. DELLUMS. Has the CIA trained, or tasked the training, through AID or proprietaries, of foreign intelligence or police officials?

Mr. NELSON. I would have to discuss that in executive session, Mr. Dellums.

Mr. DELLUMS. Has the CIA financed or assisted publication of books in the United States?

Mr. NELSON. I would have to answer that in executive session, too.

Mr. DELLUMS. Has the CIA provided technical assistance to any private aerospace companies?

Mr. DUCKETT. I'm not sure that I understand the context of the question, Mr. Dellums. I am sorry.



I just want to be sure I answer correctly.

**Mr. DELLUMS.** Has the CIA provided technical assistance to any private aerospace companies?

**Mr. DUCKETT.** If by "technical assistance" you mean whether we, in fact, make technology available to aerospace industries who are working in our behalf, and which we think would be helpful in producing a better product, of course we do.

**Mr. DELLUMS.** Is the Agency budget presented to the Congress in the same fashion that any other budget is presented?

**Mr. BLAKE.** By your question, Congressman Dellums, when you say "in the same fashion as any other budget," I assume you mean like a budget of any other Federal agency?

**Mr. DELLUMS.** Yes, an agency which has operations and authorizations.

**Mr. BLAKE.** I cannot honestly answer your question because, frankly, I am not aware of what the budgets of other agencies look like when they go through the process of OMB and arrive at the Congress.

**Mr. DUCKETT.** I believe I have attended most of the budget hearings for the Agency for at least the last 7 or 8 years, and I think I'm quite familiar with how it is done.

Maybe I should spend a moment on that point, although again I am not qualified to say precisely how the other agencies do it. I know that our budget is presented in detail by line items that get down to small amounts. We are then often queried in the session or subsequently by one or more Members on a particular detailed area of interest.

Let me give you one example. I recall some 5 years ago when one of the members of the Appropriations Committee of the House indeed asked me to spend an entire day, which I did, on certain contractual activities that related to external analysis—not hardware. I assure you we were dealing with contracts as small as \$5,000. We have had that kind of in-depth look.

It has not been across-the-board, but it has been in areas where the members wanted greater detail.

**Mr. DELLUMS.** Has the CIA provided technical equipment and assistance to foreign governments and if so, under what authorization—under what authority?

**Mr. NELSON.** Would you be a little more specific as to what you mean by "technical equipment"?

**Mr. DELLUMS.** I'm assuming that I'm asking the question about as well as I can ask it in open session without your saying you will answer when we go into executive session.

**Mr. NELSON.** I think when we go into executive session I can answer it better.

**Mr. DELLUMS.** Then I will be more specific later.

Thank you.

**Chairman PIKE.** Mr. Rogovin.

**Mr. ROGOVIN.** A number of questions have required the witnesses to respond that they would go into further detail in executive session. I would appreciate it if the record would reflect that this should not be interpreted that the answer would be that such an activity was undertaken, but rather that a further discussion of the question and further amplification may be necessary in executive session.

Chairman PIKE. First of all, the record obviously will reflect the statement which you have just made.

Second, once upon a time I was a defendant in a case entitled *United States of America v. Pike*. The judge asked me if I wanted the jury to be instructed that my failure to take the witness chair was not to be deemed as connotating either guilt or innocence. Unlike you, I remained silent on the subject and asked that the jury not be instructed, in the hope that the jury would never notice that I had failed to take the witness chair. In your particular case, the jury will now notice the failure to respond to the questions. But I assure you that there is no connotation whatsoever that any of these acts did or did not take place.

Mr. ROGOVIN. Mr. Chairman, the instance in which you were found not guilty which you referred to—

Chairman PIKE. How do you know I was found not guilty? The fact of the matter is I was found not guilty and when I called my wife to tell her about it, she said, "You're kidding."

Mr. ROGOVIN. We will appeal. I think it became quite obvious and I think that it was necessary because it was not a one-time affair that such a statement was made. Accordingly, the statement by counsel.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Mr. Chairman, I ask unanimous consent to reserve my time for executive session.

Chairman PIKE. Without objection.

Mr. TREEN.

Mr. TREEN. Thank you, Mr. Chairman.

Gentlemen, Mr. Colby has been apparently dismissed as head of the CIA. When is his departure scheduled? Do any of you know?

Mr. ROGOVIN. His resignation is at the pleasure of the President. I believe he will remain in his office for a couple of days. But that decision has not been made by him as yet.

Mr. TREEN. Now, do any of you have any information on, or do any of you know, why Mr. Colby was dismissed?

Mr. DUCKETT. Let me speak on this, if I may, as presumably the senior of the Deputy Directors here present.

I can give you a very straightforward answer: We have no idea.

Mr. TREEN. Do the other gentlemen at the table have any information as to why he was dismissed?

Mr. NELSON. No.

Mr. BLAKE. I do not.

Mr. TREEN. Have any of you been instructed to be less than completely truthful to this committee at any time?

Mr. DUCKETT. I would make the opposite statement. I think there has never been any question at all in any of our minds that our instructions have been to answer all questions truthfully and completely. We only reserve the privilege of going into executive session on sensitive matters. The instructions have been to be forthcoming at all times.

Mr. TREEN. It has been speculated by some, including some in the news media, that Mr. Colby was dismissed because he was being too truthful with either the Senate or the House committee, or both. Do any of you have any information to support that allegation or speculation?

Mr. ROGOVIN. Mr. Treen, I understand the questions that you are asking. I just wonder if these three Deputy Directors are the appropriate respondents to the questions.

Mr. TREEN. Let me ask you first if you are able to respond to it.

Mr. ROGOVIN. I think I could respond to your question.

Mr. TREEN. Well, will you?

Mr. ROGOVIN. I don't believe it would be appropriate for counsel to respond to that question, under these circumstances.

Chairman PIKE. Would the gentleman yield?

Mr. TREEN. I will be glad to yield.

Chairman PIKE. If the gentleman is stating that he has knowledge which he has obtained as a result of his special relationship with his client—the attorney-client relationship—I would completely agree with the gentleman at the table that it would not be appropriate for him to discuss it.

Mr. TREEN. I'm asking for knowledge of facts. I accept your statement and I agree that privilege would exist if that is the way you obtained the information. But if there are others at the table who know as a fact that this was why he was dismissed—aside from hearsay or speculation—I would be interested in knowing if you could respond.

Mr. DUCKETT. Mr. Treen, I will be glad to respond to that question in this way: We have all read the newspaper accounts and the various speculations there. I assume they are speculations. I don't know. I have not read any direct quotes on the subject. I, like every one else, I am sure, at this table, watched the press conference last evening. I have no other information on the subject. So I'm not withholding anything at all. I am not knowledgeable beyond that.

Mr. NELSON. Mr. Treen. I can shed no light on the question.

Mr. BLAKE. I can shed no light on the question.

My first knowledge of this was on a news broadcast—perhaps I should not identify the channel—on Sunday evening.

Mr. TREEN. I don't want you to assume, Mr. Nelson, or anyone else to assume, that I do not think we should have oversight over the intelligence community; indeed, I do. But I would like to obtain for the record, Mr. Nelson, your estimate as to what, if any, degradation has occurred in our ability to obtain information from undercover or clandestine agents, and so forth, which might be attributable to the investigations of CIA operations over the last couple of years.

Do you find it more difficult to get people to furnish us information—foreign sources and so forth?

Mr. NELSON. In answer to that question, I would have to say that it is becoming increasingly difficult. There are several factors at work here. People abroad do read the newspapers and they sometimes only get headlines, or very short articles about what is occurring. They receive the impression, however, that secrets "are coming out in Washington." As a result of this, there are agents abroad who have come to us and said they don't believe that the U.S. Government is capable of keeping secret the fact of their identity; and for that reason they decline to cooperate with us anymore. There has been a good deal of apprehension on the part of many foreign services with whom

we work in a cooperative relationship as to whether or not it is possible to continue that relationship in the current atmosphere.

There are a number of cooperative Americans who have worked with us in the past—many out of purely patriotic duty—who have backed off and said they would rather not work with us under these circumstances for fear, if they are businessmen, that their business might be contaminated. So I think I would have to say there has been some effect from these hearings and from the publicity that has occurred since last December.

I don't want to exaggerate this, however. The Agency is still functioning abroad, and I think functioning rather effectively. I think what we have here is a situation in which the structure is becoming more fragile. What initially was a fairly sound structure, in terms of the morale of our own officers and in terms of the willingness of people abroad to work with us, has been somewhat eroded by these events. We are now in a situation where the less strong elements, or more people who are under greater jeopardy, are beginning to back away. One hopes that we can forestall this as much as possible. I hope in working with the Congress we can soon come to a resolution of these hearings and get on with the job of reconstituting the oversight process, the job of reconstituting the Agency, and assuring the people who cooperate with us abroad, that in the United States, in a democratic system, we can still keep a few secrets.

Mr. TREEN. Thank you. I think my time has expired.

Mr. MILFORD. I would yield some of my time to you.

Chairman PIKE. Do you wish any additional time?

Mr. TREEN. I thank the gentleman and suggest you take your time back; you might need it.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Gentlemen, if over the last 2 years, then, you have had this new difficulty, particularly since, let's say, December 1974, has it become necessary to up the ante in terms of money, accommodation gifts, covert procurement, arms, any other number of things, in order to get or to maintain your level of operation?

Mr. NELSON. No. The answer to that question, Mr. Hayes, is "No."

Mr. HAYES. In other words, it is just as cheap as it ever was to maintain our intelligence position, our agents, and others?

Mr. NELSON. Yes, sir.

Mr. HAYES. Has there been any particular reason, then, other than the fact that it is simply customary, for CIA machinery to be used to procure limousines, for example?

Mr. NELSON. I can answer that limousine question very thoroughly, Mr. Hayes, in executive session, because it does involve a foreign leader.

Mr. HAYES. I am not asking for the foreign country. I am asking for the broadest of generalities. Did we in fact procure limousines—no makes, no models—aye or nay?

Mr. NELSON. We did not pay for these limousines with U.S. money. We assisted a foreign government in buying a limousine.

Mr. HAYES. Accommodate themselves?

Mr. NELSON. Yes, sir.

Mr. HAYES. Well, is it not a method of making payment to allow procurement by agents of, let's say, so-called luxury items—things that are outside what the normal GS-15 or 18 might expect in the course of his employment?

In other words, we do not give them a paycheck on the first of every month; do we?

Mr. NELSON. If you are talking about gifts to people who are co-operating with us abroad, it is a normal practice in many instances to give these people gifts in payment for favors received.

Mr. HAYES. Do we not go even further and allow those persons certain concessions which in this country might be called commercial concessions—in other words, the right to sell something or the right to have a franchise on something?

Mr. NELSON. I know of no instance in which that is true, Mr. Hayes.

Mr. HAYES. Would you be offended by the characterization that, in many respects, our CIA has become a procurer for the whimsy of certain foreign public officials in order to both meet their demands and continue their support of our operations—either within their borders or nearby?

Mr. NELSON. In answer to your question of whether I would be offended: I think the answer is "Yes," because I don't think that is an accurate characterization. I would have to go into executive session to explain all the details.

Mr. HAYES. But you are telling me that, not related to any particular nation or to any personality, you cannot tell me whether or not, in very specific terms, we in fact pay attention to the whimsy or the expressions of foreign leaders. If somebody says that they want a set of golf clubs, off they go. Is that fair or unfair?

Mr. NELSON. Mr. Hayes, we have a job to do. I have already said that giving gifts or doing favors for people is part of that job of getting people to cooperate with us abroad for a specific operational purpose. I do not believe it is whimsical to provide such things when it furthers the operational purpose. That has to be a judgment made by the command line.

Mr. HAYES. I am not saying it is whimsical on the part of the CIA. I am talking about the whimsy in wanting the item in the first place.

Mr. NELSON. If it were purely whimsical, we would not give it to them.

Mr. HAYES. You have indicated in a very long and touching declaration that Congress in its struggle to reassert its oversight responsibilities has made things more difficult. Then you tell me that the price has not gone up. How do you explain that?

In other words, the people are just not available at any price; is that it?

Mr. NELSON. When your neck is on the line, I presume that the price doesn't really matter.

Mr. HAYES. I don't know what you mean by "neck on the line."

Mr. NELSON. We have agents abroad who are working for us and if they were found to be working for us, they would be executed. As a result, no amount of payment is going to be worth a person being executed.

Mr. DUCKETT. I would like to clarify the record on one point. Mr. Nelson may have misspoken. I would like to have the record read

that it is the leak of information, not the investigation, which has caused the problem.

Chairman PIKE. The time of the gentleman has expired. Mr. Kasten.

Mr. KASTEN. Mr. Blake, I would like to ask some questions as to the operation of security classification—specifically, the security code. Who determines the security code which will be assigned to a request for procurement?

Mr. BLAKE. First, if I may, shall we call it a sterility code, to be sure we are properly speaking as to what we have in mind.

I could give you a minor definition.

Mr. KASTEN. Who determines the sterility code?

Mr. BLAKE. I understand. The basic determination of the sterility code starts with the operating component which wants to acquire the chattel. This goes to a procurement mechanism which accomplishes the acquisition of the chattel.

Mr. KASTEN. What standard was used to put an SC code on a golf hat, a stroke counter and a putter?

Mr. BLAKE. I must say, sir, I think with all fairness, without knowing more of the details, I cannot reasonably respond to that particular question.

Mr. KASTEN. What judgmental standards are used in the determination of an SC code?

Mr. BLAKE. Judgmental standards that are brought to bear on the choice of a sterility code are whether or not the piece of property to be given to a foreigner—usually in connection with foreign operations—can, from our operational point of view, be identified as having had any connection whatsoever or having been furnished by either the Central Intelligence Agency and/or the U.S. Government.

Mr. KASTEN. On this request for a golf hat, a stroke counter or a putter, which was to be "nonattributable" to the U.S. Government, why was this item shipped by nonclassified air pouch? What are you doing here?

Mr. BLAKE. I would like to make these observations. That is not a normal type of purchase under a sterility code, because it is hard to identify as to its source.

Mr. KASTEN. How would you purchase an item like this so that it would be, in fact, attributable, in your coding words?

Mr. BLAKE. Attributable or nonattributable?

Mr. KASTEN. What are you doing here? How could you possibly purchase a golf hat, a stroke counter, or a putter—either through a proprietary or with cash handed to an employee—in an attributable manner?

Mr. BLAKE. There are several ways it could be done in an attributable fashion, if that is what you seek.

You can do it by a Government check. We are a participant with the General Services Administration and their Government-wide procedures to acquire property and furnish it to Government agencies through a procedure they called Fed/strip. There are many ways we could acquire it and have it known that it was purchased by the U.S. Government.

Mr. KASTEN. Would you say that the purchase of a golf hat, a stroke counter and a putter with all these different kinds of codes is standard operating procedure, or would this be a unique example?

Mr. BLAKE. It is not standard operating procedure to acquire the kind of material you are describing, sir.

If you are saying we tried to buy it so it would be nonattributable, that is, so it did not appear to come from the United States, if I understand the thrust of your questions—

Mr. KASTEN. Is it normal, after you went through the trouble of assigning a security code, that you would simply ship the item by unclassified air pouch?

Mr. BLAKE. It could possibly be done, depending on how the consignor or consignee names were used.

It would be possible to send it as a personal shipment.

Mr. KASTEN. On command and control, does the CIA originate all proposed covert actions?

Mr. NELSON. No, sir.

Mr. KASTEN. Does any other Government agency propose such projects, and if so, which ones?

Mr. NELSON. Any member of the National Security Council is free to propose a project.

Mr. KASTEN. Have any covert action proposals been originated at the White House? Has any President directed the initiation of a covert operation without the CIA having proposed it from the first?

Mr. NELSON. Mr. Kasten, these questions were gone into in great detail in executive session. It seems to me it is necessary to go into executive session to discuss it.

Mr. KASTEN. If this were to happen, would you consider it a departure from the standard operating procedure in this area?

Mr. NELSON. The normal procedure is for the proposals to be considered by the 40 Committee. I think that has been made quite clear publicly. It is possible, however, for anyone in the Government to propose a covert action, and it is possible for the President to decide to go ahead with a proposition without necessarily consulting the 40 Committee.

Chairman PIKE. The time of the gentleman has expired. Mr. Lehman.

Mr. LEHMAN. Thank you.

I am pleased to be back on what I think is the essential thrust of this committee. The way in which the CIA spends this money is of great concern to me. Within the CIA, funds for procurement seem to be so readily available. That really bothers me, also. I think what this committee should try to do is place some controls on funds so they will not be so available. Whether you need \$20 million for a covert operation or \$50 for a set of golf clubs, some day I would like to see the CIA say, "Gee, we would like to, but we don't have the money."

I don't know whether these foreign people trust us, but the way we spend money on them, they must surely love us. That is what I think is part of our problem.

How much of your purchases are made through competitive bidding, percentagewise? Can you give just a ball park figure?

Would you say one-third of it, two-thirds of it, three-fourths, or half of it?

What percentage of these purchases are made through competitive bidding? Do you have any idea?

Mr. BLAKE. Yes, sir, I do; but may I consult for a moment with Mr. Duckett?

Mr. DUCKETT. I think that it has been well understood by the committee that our Director has taken the position that we will not publicly reveal budgetary figures. I think if we start to deal with ratios here, we are simply going to unravel that.

I would urge that the chairman allow us to hold that question for executive session.

Mr. LEHMAN. I don't think a percentage figure—whether you say 37 percent or 87 percent—would endanger the national defense. I can see that if you said \$860 million, that would; but I really do not see how a percentage figure could.

Mr. DUCKETT. I would like to try to explain very briefly the fact that one of the key elements of our concern for the budget is exactly that of allowing other people, with whom we operate and against whom we operate, to know what relative amount of money is being spent for what purpose.

Mr. LEHMAN. I think you are so far wrong on this. I think it is important for this committee to know whether you put those golf clubs out for competitive bids or whether you go to some store that will rip you off and charge you double the price for the same clubs. That is taxpayers' money you are dealing with.

Mr. ROGOVIN. This will be explained fully in executive session.

Mr. LEHMAN. Believe me, I don't understand it, but I will accept it.

Do you ever buy anything for a third party and sell it to him as a favor for less than what you paid for it?

Mr. NELSON. No, sir, I don't know of any such instance.

Mr. LEHMAN. The term "procurement" has other connotations. Does the Agency buy things in this country that it would be illegal to buy as a private individual—drugs or sex for instance?

Mr. NELSON. The Agency buy no drugs.

Mr. LEHMAN. That answers my question. I yield back the balance of my time to Mr. Dellums.

Mr. NELSON. Mr. Chairman, I would like to make the record clear that we don't buy either drugs or sex.

Mr. LEHMAN. Your hesitancy provided my answer.

Chairman PIKE. The time of the gentleman has expired. We have a quorum call on. The second bell has just rung.

Mr. JOHNSON, did you want to ask any questions in open session?

Mr. JOHNSON. I don't think it is that important, Mr. Chairman.

Chairman PIKE. That being the case, the committee will stand in recess until this afternoon, when we will meet in executive session.

Mr. ASPIN. Do we need to vote on that?

Chairman PIKE. Yes, we do. The clerk will call the roll.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. Lehman.

Mr. LEHMAN. Aye.

The CLERK. Mr. McClory.



Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 9 ayes and 1 nay, the committee votes to meet in executive session this afternoon.

[Whereupon, at 12:20 p.m., the committee recessed to reconvene at 2 p.m., the same day.]

#### AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

Mr. Johnson, you are recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

The questions I would like to ask at this time, Mr. Chairman, are those which I think can be made public. I would have asked them in open session anyway.

Chairman PIKE. Unless the witnesses and Mr. Rogovin have some objection to anything which Mr. Johnson asks, these questions will be added to those which were asked in the open session this morning. This is being done as an accommodation.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. ROGOVIN. Mr. Chairman, in order that the witnesses may give as full and complete statements as possible, will we have an opportunity, before the transcript is made public, to insure that the deletions are—

Chairman PIKE. You may say right now, as the questions are asked, that you don't want that on the record and it won't be on the record.

Mr. DUCKETT. We will treat this as an open session for the moment.

Chairman PIKE. Right.

Mr. JOHNSON. After reading through this material yesterday, gentlemen, I felt that there were certain things about accommodation procurements and other things we didn't have time for, that ought to be made public just as a matter of record. I don't know that there is anything significant about its being made public except that it is the sort of information that the public has a right to know. I felt that the definition of accommodation procurement should go on the record, as well as an explanation as to what accommodation procurements generally tend to be, how many there are, and a general description.

Mr. Nelson, I guess that is in your bailiwick.

Mr. NELSON. Yes, sir.

If I can respond to that, an accommodation procurement is a procurement made by the agency in the United States, in most cases, for one of two purposes: Either to assist a foreign government to make a purchase in the United States, or to assist an individual to purchase something that is usually manufactured in the United States.

The accommodation procurement ultimately has an operational purpose behind it. There is some reason for which we undertake accom-

modation procurements. These procurements are rather rare in terms of our total procurement picture, but they do occur. I couldn't give you an exact percentage or in how many instances these procurements occur, but they are not really too frequent.

Mr. JOHNSON. They are not frequent?

Mr. NELSON. No, sir. What I am comparing them to is the whole pattern of Agency procurement.

Mr. JOHNSON. I am not thinking either in terms of numbers or the amounts of dollars involved, but more in terms of the number of times a year accommodation procurements might be made.

Mr. NELSON. To really answer that question, Mr. Johnson, we would have to go through every single procurement action and determine that.

Mr. JOHNSON. They are made frequently, are they not?

Mr. NELSON. Frequently in comparison to what, I think is the question. In comparison to the larger bulk of our procurements, what I mean to say is that they are not made too frequently.

Mr. JOHNSON. I don't see any need to have you spend a lot of time digging out the numbers; but there were some instances where it seemed to me that these procurements were rather delicate operations, and that higher authority in the 40 Committee and the President were not necessarily informed. I would like to know who makes those decisions, when they involve other countries and significant kinds of equipment.

Mr. NELSON. The decision on who approves an accommodation procurement is a question that is dealt with in our regulations. Up to a certain small limit overseas—I believe it's \$3,500—it's possible to make an accommodation procurement for someone. Beyond that, the matter must be referred back to headquarters in Washington. Any major accommodation procurement has to be checked with me and the Director.

Mr. JOHNSON. By major, do you mean hundreds of thousands of dollars?

Mr. NELSON. Yes; certainly over \$500,000.

Mr. JOHNSON. And these have to be checked with you and the Director?

Mr. NELSON. Yes, sir.

Mr. JOHNSON. You do not have to check with anybody else when you are making—

Mr. NELSON. Again, it's a judgment on the Director's part and on my part as to whether there is some particular political sensitivity involved. If that were the case, presumably we would check with the Department of State or with the National Security Council.

Mr. JOHNSON. It seemed to me there were instances where there were particularly delicate political subject matters involved, and there had been no checking.

Mr. NELSON. I think, Mr. Johnson—

Mr. JOHNSON. Would you agree with that?

Mr. NELSON. In executive session, we can discuss the specific—

Chairman PIKE. You are in executive session. If you don't want that particular response to be on the record, all right.

Mr. JOHNSON. I am trying to keep this portion on the record. I wanted to point out, after reading some material on this, it seemed to me that there were some decisions that were made, on what could have been regarded as politically sensitive matters, that had not been referred to higher authority. I wonder if you might agree, in looking back on it, that there have been times when you perhaps should have referred this to the State Department or the 40 Committee.

Mr. NELSON. If we could discuss that on a classified basis item by item, I would be very glad to comment; but I would rather not make any generalities just off the top of my head.

Chairman PIKE. Mr. Johnson, I will simply say that it is my expectation we will go around again, and you can hit it the second time around.

Mr. NELSON. Could I just add one point which I neglected to mention on this definition of accommodation procurement, Mr. Chairman? These procurements are paid for by the foreign government or foreign individual who is asking us to make the procurement. This is not an expenditure of U.S. Government funds.

Thank you.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Mr. Chairman, could I ask whether or not the public portion of this testimony is ended and we are now——

Chairman PIKE. The gentleman is absolutely correct, unless Mr. Field has some questions he wants to ask that should be on the record.

Mr. ROGOVIN. Mr. Chairman, perhaps we can also suggest this: There are obviously going to be answers to questions in executive session that could be made public, and we will be happy to go over the transcript and insure that those answers are also made part of the public record.

Chairman PIKE. Let us say that up to this point everything we have done is in open session. Is that agreeable to the gentlemen at the table?

Mr. NELSON. Yes, sir.

Chairman PIKE. Mr. Field says he has nothing that must be asked in open session.

[Whereupon, at 2:15 p.m., the select committee proceeded into executive session.]



## CIA DETAIL AND MEDIA PRACTICES

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THURSDAY, NOVEMBER 6, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 2:10 p.m., in room 2118, Rayburn House Office Building, Hon. Otis G. Pike [chairman] presiding.

Present: Representatives Pike, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Emily Sheketoff and Stanley M. Hecht, investigators.

Chairman PIKE. The committee will come to order.

Our witness this afternoon is William Colby, who has been up on Capitol Hill before. In fact, Mr. Colby, it seems to me you have walked up and down quite a few hills in the last few days, weeks and maybe even hours. I am not sure of the perils of Colby today, but it is an interesting subject.

I would like to state before we start not only my appreciation for your being here, but my conception of what you have done in the last few weeks and months. There has been a great deal of commentary about whether or not the Director of Central Intelligence has been "forthcoming"—and that is the word that is used all the time—as to your relations with Capitol Hill. I have heard comments to the effect that you have been too forthcoming with Capitol Hill.

It has been my own experience and judgment that if you are asked precisely the right question, you will give an honest answer. You do not lead us into those areas which would help us know what the right question to ask is. You do not make it easy for us to ask the right question. Anyone who thinks you have been running back and forth to Capitol Hill with your brief cases bulging with secrets which you are eager to bestow upon us hasn't sat on my side of the desk. In my judgment, you have done a very responsible job for your Agency at a time when your Agency had great problems, and I welcome you back here, not as a friend but as a respected adversary, because I feel that that is the relationship which we have had.

I think that you have the same concept of the Constitution of the United States as is shared by most of the members of this committee. I personally just want to say that I am glad you are here and that you will see the Agency through these next few weeks.

Mr. Murphy?

Mr. MURPHY. Mr. Chairman, just a short and strong amen to what you just said. I, too, have read the commentaries. I have found Mr. Colby, as you have indicated, doing nothing other than his job as he sees it as an American, and I think he is a man of integrity. We have a responsibility in this Congress, coequal with the executive branch, to see that the rights of Americans aren't violated; and I would like to add that I think Mr. Colby is a fine and decent man and I think the President would do well to reconsider his previous action.

Chairman PIKE. It is my understanding, Mr. Colby, that you have an opening statement to give us this afternoon on our basic subject matter which comes under your heading of "personnel" and under our heading of "risks." What we are interested in looking at is where the CIA has people stashed away throughout the United States of America and overseas, I realize that some of this will have to be done in executive session but I would like to stay in open session as long as we can.

Please proceed.

**STATEMENTS OF WILLIAM E. COLBY, DIRECTOR OF CENTRAL INTELLIGENCE; WILLIAM NELSON, DEPUTY DIRECTOR OF OPERATIONS, CENTRAL INTELLIGENCE AGENCY, AND MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE**

Mr. COLBY. Mr. Chairman, thank you; and thank you also for your remarks.

Mr. Chairman, CIA personnel, when they go overseas, obviously must go under some other title. In some cases, this is a title of another agency of the Government; in some cases it is some other title outside of the Government.

For reasons of continuity, CIA personnel sometimes have to retain that identification while they serve a tour within the United States.

This is a headquarters tour and they are not using that cover for another reason during that period but merely to provide some continuity. There are certain activities that we have done within the United States that do need some identification other than CIA. I think I have explained on previous occasions the need for covering a security investigation so that it does not highlight the fact that the person being investigated will shortly become a member of the CIA, because we do not want that reputation to be around.

But I think you have asked that two particular areas be covered, Mr. Chairman: One, the subject of detailees to other Government agencies, as distinct from the use of other agencies for cover; and, second, the relationship with the field of journalism generally in our operations.

With respect to the latter part of that—the journalism area—Mr. Chairman, I obviously cannot go into detail as to the identifications or the people involved, but I think I can sketch a few general points here about which we can go into full detail in executive session.

In the first place, as people equally interested in foreign affairs, CIA people and journalists frequently run into each other and exchange ideas. This occurs both abroad—in our stations abroad—and in the

United States. In the past year, for example, CIA has received about 100 journalists in our building for discussions of foreign events or for a detailed discussion and analysis of some foreign situation.

In that time, we have answered something like 1,200 or 1,300 telephone inquiries from journalists about some foreign development abroad on which the journalist is seeking the advice and judgments of our analysts. I think this is perfectly proper, Mr. Chairman, and I think it is more than perfectly proper. I think it is part of the efforts we in CIA are making to insure that our product is useful, not only to the elements of the executive branch who need it directly, but also to the Congress and others. We do make much of our information available to congressional committees. We do it on both a regular and periodic basis, and we do it in response to specific requests for testimony on some foreign situation.

Likewise. I think it important that the public benefit to the extent feasible—within the limits of the requirement to keep sensitive sources secret—and for that reason we do respond to these journalistic inquiries about some situation abroad.

The numbers I gave you are those involving discussions of substance. I am not including the number of journalists who have been curious about the state of the intelligence community these days, or CIA or any of those things. That is a totally separate category and involves a larger total number, I might add.

But beyond that, Mr. Chairman, over the years, we have had an operational relationship with a certain number of journalists overseas. We have worked with these people to help us on our foreign intelligence responsibilities. In some cases, they can provide us with information that we ask them about; in some cases they can make contacts with people that it is difficult for an official of an embassy or an American mission abroad to be in touch with. And for this reason, we have on occasion used people who have connections with journalism for this purpose.

Under our own restraints, we have been very careful about this, and in recent years we have even further strengthened our restrictions. We have taken particular caution to insure that our operations are focused abroad and are not focused at the United States in the sense of collecting information about the United States or, on the other hand, influencing the opinion of the American people about things from a CIA point of view.

We have dropped contacts and relationships with journalists and others in the past couple of years where we felt that there was some belief that the relationship could be construed as an effort to influence a major circulation American journal, for example, or that a particular project would be aimed at affecting U.S. public opinion through media operations.

In order to carry out this policy, we have a careful regulatory control procedure in our operations directorate and in our regulations.

Regulations require the approval of a senior level official of the Agency for any connection with American journalists or media personnel. As a further matter of policy, even for those journalists with whom we do deal—and it is a small number which I would certainly give you in executive session, Mr. Chairman—we do not attempt to

influence what they put in their U.S. journals. What they do with respect to their own journal is their business. We do not tell them what stories to write or what subjects to cover. We do not at this time employ any staff members of regular U.S. general circulation journals.

You may recall there was some publicity a couple of years ago in which I undertook the commitment to terminate any such relationships, and over these past 2 years we have in fact terminated those relationships.

We have certain other contacts with people who have considerably less connection with American journals or who are connected with journals which are not for general circulation. Those we have continued because we believe that their material does not affect American public opinion to any substantial degree or because we believe that their material is viewed as something coming from the outside—something that the journal has a full choice over whether it wishes to keep or not.

Turning to the other subject, Mr. Chairman, the subject of detailees: In common with the other agencies of the Government, CIA has a program which permits the detail of our employees to other agencies. The detail of agency personnel is approved when the assignment is determined to be beneficial to the career development of an individual, or when it can make a contribution to a foreign intelligence-related activity. Employees on such details normally continue to receive their agency entitlements during such a detail. In a sense, I was one of those at one time, Mr. Chairman, when I left the Agency on leave-without-pay and served in the Agency for International Development and the Department of State when I was in Vietnam and then later returned to the Agency. I was not under a cover at that time. I was a detail.

Reimbursement to CIA for such details depends upon the individual circumstances of each detail. If the employee performs Agency-related duties, is a participant in a joint operation of a national intelligence program, or is assigned as part of a career development plan, then we will reimburse the agency for which he works for his services.

If, on the other hand, he moves totally to another agency and works for it on its functions for a period during which he is essentially doing their work, then they will not be reimbursed during that period. The receiving agency will pay for his full entitlements.

I might add here that no such details are effected without a full coordination with the appropriate officials in the agency to which the individual is assigned or detailed. There is no penetration of the detail without the knowledge of the agency's senior management.

As of the 21st of October of this year, there were 104 employees of CIA on detail to other components of the U.S. Government. Of these, we were reimbursed for 27 and not reimbursed for 77.

There are also times, Mr. Chairman, when CIA has a need for the skill of an individual who comes from another Government agency. Particularly in its earlier days, CIA was heavily staffed by military personnel who were detailed, and a number of the senior officers who are in the Army today spent a tour of 2 or 3 years in CIA at some point in the early fifties.

Also, there may be activities of common concern to the CIA and to another Government agency as members of the intelligence com-



munity. If these situations exist, we make arrangements for a reimbursable or nonreimbursable—depending on the circumstances—detail from the other agency to CIA.

As of the 21st of October of this year we had 179 details in from such other agencies of the Government, of which we were reimbursed for 80. The others were nonreimbursed—a total of 99.

I think that gives the overall picture of these two subjects, Mr. Chairman. I would be delighted to answer any questions to the degree I can.

Chairman PIKE. Well, I don't know how far we are going to be able to go in open session, but we are going to try.

Do you now have people who are being paid by the CIA on anything which you referred to as "a major circulation American journal"?

Mr. COLBY. We have no such staff members—

Chairman PIKE. That was not the question. The question was do you have any people being paid by the CIA who are contributing to anything which you called "a major circulation American journal"?

Mr. COLBY. Yes, Mr. Chairman, we do. We have some who are in the category of free lancer or stringer or something of that nature abroad—individuals who are not considered a part of the staff of that journal.

Chairman PIKE. I am not going to ask you for names or numbers. I am going to ask you this, however: Do you have any people who are contributing to major circulation American journals whom you are paying without the knowledge of the management of the major circulation American journals?

Mr. COLBY. Yes, we do. Stringers have submitted occasional pieces or frequent pieces to various journals that we have not told the management about, but they are considered as nonstaff members of that journal. They are independent contractors.

Chairman PIKE. Do you have any people at the present time who are paid full time by the CIA who also write for major circulation American journals?

Mr. COLBY. We do have abroad some of our employees who are paid for their services by CIA who also submit pieces occasionally. That is a very small number, but we do have people who submit pieces to American journals.

Chairman PIKE. Do you have any people paid by the CIA who are working for television networks?

Mr. COLBY. This, I think, is getting into the details. Mr. Chairman, that I would like to discuss in executive session. I think if we begin to break the question down to the component parts, we begin to focus things a bit.

Chairman PIKE. Well, when you refer to major circulation American journals, are you referring to both written media and visual media?

Mr. COLBY. Yes, I do. I am sorry. I should have made that clear.

Chairman PIKE. All right. Do you have any people being paid by the CIA who are contributing to the major national wire services—and by that I am referring to AP and UPI.

Mr. COLBY. Well, again I think we are getting into the kind of detail, Mr. Chairman, that I would prefer to handle in executive session.

Chairman PIKE. Mr. McClory.

Mr. McClory. Thank you, Mr. Chairman.

First of all, I want to welcome you back to this committee room, Mr. Colby, and to say how delighted I am at the news reports that you are willing to remain on for a while as Director of Central Intelligence and head of the CIA. I want to state very forthrightly that I think you have been most cooperative. The information you have provided, through your testimony and through your Agency has been invaluable insofar as the work of this committee is concerned. I commend you for it and I want personally to express my appreciation to you for the very professional, very high level, and very cooperative way in which you have behaved as a public official and one who is responding to the extensive inquiry by this select committee of the Congress.

With respect to the subject of detailees, I have in my hand a document which I understand has been declassified and which you may have before you—

Mr. COLBY. I do.

Mr. McClory. It relates to political aspects of an individual who was assigned to the National Security Council staff. If you will permit, I would like to ask you some questions about it.

I would like, first of all, to confirm that that has been declassified.

Mr. COLBY. Yes, Mr. McClory, it has been.

Mr. McClory. The person's name is Chester Cooper. Was Chester Cooper, while serving in 1964 as Assistant Deputy Director for Intelligence for Policy Support in the Central Intelligence Agency, assigned to the White House as a detailee?

Mr. COLBY. He was a CIA employee who was assigned to the White House to the National Security Council staff, I believe.

Mr. McClory. He worked at the White House with Mr. McGeorge Bundy on national security matters and, during that time, he also participated in drafting campaign speeches on international issues which were delivered by President Johnson and by other senior officials; is that correct?

Mr. COLBY. As a member of the NSC staff, he primarily worked on intelligence matters relating to Vietnam and Chinese affairs which were his specialty at the time. During that period, he did assist in the drafting of certain speeches for the President.

Mr. McClory. He also participated in the preparation of a factbook on national security and other matters which were used by the Democratic National Committee?

Mr. COLBY. That is indicated by this report, Mr. McClory, and I don't contest it.

Mr. McClory. Does the report also indicate that Mr. Cooper was the individual who in 1964—and I think this was ascertained as late as 1973—was getting advance copies of candidate Senator Goldwater's speeches and delivering them to Democratic personnel for President Johnson, before Senator Goldwater delivered them?

Mr. COLBY. I believe there was an arrangement at that time by which somebody picked up copies of Mr. Goldwater's speeches, which had been made available for advance distribution to the press, and brought them to him. They were picked up at the Republican headquarters.

Mr. McClory. At this time, the Director of the Central Intelligence was Mr. McCone?

Mr. Colby. Yes.

Mr. McClory. Who is Tracy Barnes?

Mr. Colby. Mr. Tracy Barnes was the Chief of the Domestic Operations Division, which was a division responsible for certain of our foreign intelligence activities here in the United States.

Mr. McClory. And this memorandum indicates he is the one who arranged this activity by Cooper?

Mr. Colby. Yes.

Mr. McClory. Where is Tracy Barnes now?

Mr. Colby. Mr. Barnes unfortunately died several years ago.

Mr. McClory. How do you regard this kind of activity on the part of a detainee, Mr. Colby?

Mr. Colby. I think, Mr. McClory, this was somewhat on the edge of what he should have been doing. Working in the National Security Council staff, I am sure he was providing his experience and his assistance to the National Security Council, and to the President, in that position.

Mr. McClory. Well, even though we regard the President of the United States, whoever he happens to be, as the one who is in charge of the National Security Council and the intelligence community, in your opinion, it would not be appropriate, would it, for a CIA employee to be getting advance copies of speeches by an opposing candidate and delivering them to the President?

Mr. Colby. I think that was improper, Mr. McClory, no question. I draw the distinction between that aspect of this report and the aspect of his working as a member of the National Security Council staff. The matters that he was an expert on were such a prominent part of the whole activity at the White House at that time that it was probably very difficult for him to distinguish between what was proper support to the President and what was political.

Mr. McClory. As Director of the CIA, you wouldn't countenance this type of activity?

Mr. Colby. I certainly would not countenance picking up speeches by another candidate and giving them to the White House.

Mr. McClory. My time is up. Thank you.

[The memorandum follows:]

#### POLITICAL ASPECTS OF CHESTER COOPER'S ASSIGNMENT TO THE NSC STAFF

In 1964 Chester L. Cooper, Assistant Director (Intelligence) for Policy Support (a staff position in the Office of the Deputy Director for Intelligence), had the responsibility of providing support to the White House on foreign intelligence matters. In July of that year, by agreement between DCI McCone and Assistant to the President for National Security Affairs McGeorge Bundy, Cooper was detailed to the National Security Council staff under Mr. Bundy as an expert on Vietnamese and Chinese affairs.

Mr. Cooper served as a point of contact between CIA and the NSC staff, working primarily on intelligence matters related to defense and foreign policy. During this period, Mr. Cooper apparently participated in the drafting of campaign speeches on key international issues by President Johnson and other senior officials. He also participated in reviews of the foreign policy and defense sections of the Democratic National Committee's "Fact Book" on national security, space, and foreign affairs. Among his activities were critiques of the speeches of the Republican Presidential candidate. Cooper apparently served as Mr. Bundy's prin-

cial point of contact and support in dealing with the international aspects of the 1964 election campaign.

In December 1964, Mr. Cooper went on leave without pay status but continued to work at the White House. Mr. Cooper continued to be carried on Agency rolls in an LWOP status while he was working, later at the Institute for Defense Analyses, and then the State Department. He resigned from CIA in April 1968.

On December 21, 1973 a member of the Agency's Inspector General Staff queried Mr. Cooper on the political nature of his activities while on the NSC staff. At that time the press carried reports that CIA spied on Senator Goldwater. Mr. Cooper told the inspector that he had received advanced copies of Senator Goldwater's 1964 campaign speeches. This was arranged by Tracey Barnes, then Chief of the Domestic Operations Division. Cooper said that Tracey asked him if he would like to have copies of the speeches and would it be useful to have them before he (Cooper) read them in the newspapers. Cooper did want them and told the IG inspector that they were picked up and delivered to him by a woman. He recalled that the deliveries covered a 6 week period during the summer of 1964. IG records show that the advanced press copies of the Goldwater speeches were picked up by a female Domestic Operations Division employee for Cooper as he described. He would then critique them. There is no question that Mr. Cooper was serving the White House in the political campaign while on the CIA payroll and that he was assisted, in part, by a member of the Agency's Domestic Operations Division.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you very much, Mr. Chairman.

Mr. Colby, is it true that, in the past several years, several full-time employees of major domestic media outlets were also full-time employees of the Central Intelligence Agency?

Mr. COLBY. I think I can answer that better, Mr. Dellums, in executive session. I would rather answer it in executive session, if I may.

Mr. DELLUMS. Well, I have a series of additional questions that would follow that for the executive session.

I have here, Mr. Colby, two books. One is "The Penkovsky Papers," and the other is "The New Class" published by Praeger Press.

What part did the CIA play in writing, publishing, and/or distributing either one or both of these books?

Mr. COLBY. I would like to discuss that in executive session, if I may, Mr. Dellums.

Mr. DELLUMS, I don't know, Mr. Chairman, whether it is appropriate to ask this question, but what is your explanation of white, black, and gray media operations? Would that also be more appropriate for executive session, or can you talk about it generally in open session?

Mr. COLBY. I can describe that. That was a set of definitions that was worked out within the Government about 15 years ago, more or less. White propaganda would be propaganda which is clearly attributed to its originator—the Voice of America or something of that nature.

Gray propaganda is material which is not attributed to the originator and for which there is some other attribution of the origin of the material.

Black propaganda is material which is attributed to the target itself. We have had a number of those kinds of documents which were looked into by a House committee some years ago. They were distributed in Africa, allegedly by the American Foreign Service, but actually they were telegrams and messages put out with Communist support. The documents were falsely attributed to the United States. They were designed to show the United States in some bad light or other. That would be an item of black propaganda.

Mr. DELLUMS. Thank you. Has the CIA ever planted or leaked stories to foreign press sources? And if the answer to that question is "Yes," were any of the stories false or in any way misleading?

Mr. COLBY. As a part of our covert responsibilities, Mr. Dellums, we have provided a certain amount of information all over the world to the foreign press.

Mr. DELLUMS. Has the CIA ever financed, published, or controlled, at least in part, newspapers, services, journals, or periodicals in foreign nations; and if so, what was the general purpose?

Mr. COLBY. Again, as a part of our responsibilities for covert political and propaganda action abroad, the answer in a very broad sense is "Yes," and I would like to go into detail in executive session.

Mr. DELLUMS. Thank you.

Has the CIA ever asked U.S. journalists to write a particular story or express CIA-selected information?

Mr. COLBY. With respect to foreign journalists for foreign publication, the answer is "Yes."

Mr. DELLUMS. U.S. journalists?

Mr. COLBY. With respect to American journals and the newsmen that we were discussing earlier, we make a particular point of not instructing them as to what they should write in the American media that they write for.

Mr. DELLUMS. Has the CIA ever asked media networks or journals to kill a story?

Mr. COLBY. I spent a great deal of my time earlier this year trying to get that done, Mr. Dellums.

Mr. DELLUMS. Was that the the only instance?

Mr. COLBY. No; there have been other times. There have been times when I have appealed to the journalists in America, in terms of their being responsible journalists, not to run a story.

Chairman PIKE. Would the gentleman yield briefly?

Mr. DELLUMS. Yes.

Chairman PIKE. Have there been any occasions in the last 2 weeks?

Mr. COLBY. No.

Mr. DELLUMS. I have asked this question several times and I am not sure if I have a clear answer.

Can you explain the nature of the relationship between CIA and Praeger publishers?

Mr. COLBY. I would rather go into that in detail in executive session, Mr. Dellums.

Mr. DELLUMS. I may have missed your earlier comments, but has the CIA ever covertly assisted the publication, distribution, or writing of any article, book, or media presentation in the United States?

Mr. COLBY. I think I really have to explain that in executive session. I revert to my point that any activity we do in this field is aimed abroad, but I must explain the details of that in executive session.

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Colby, were any CIA officers assigned to the BNDD and its successor, the DEA?

Mr. COLBY. Yes; there were certain ones at various times, Mr. Murphy.

Mr. MURPHY. How about the DIA?

Mr. COLBY. DIA?

Mr. MURPHY. Yes.

Mr. COLBY. Yes.

Mr. MURPHY. The same answer regarding the Treasury Department?

Mr. COLBY. Yes.

Mr. MURPHY. Were these CIA detailees ever asked to report back to the CIA as to what was happening at the organization to which they were detailed?

Mr. COLBY. Certain of the CIA officers detailed to those organizations are detailed as liaison officers, in which case their function is to make sure that there is a full exchange of information between the two agencies on that job. Certain of them, however, are assigned to work in that area for a time, and they are given over to the full command authority of the organization to which they are sent.

Mr. MURPHY. Were any CIA detailees—and possibly we can only go into this in executive session—detailed to Cabinet officers in any administration?

Mr. COLBY. Yes; on certain occasions.

Mr. MURPHY. On a permanent basis—say a secretarial level or administrative assistant level?

Mr. COLBY. I can think of one secretary who was detailed to the White House at one point, and an individual later became a Cabinet officer and asked that she assist him in his new job. He knew all the time, of course, what she was was, and her background.

Mr. MURPHY. Were any of the Cabinet members who had CIA detailees unaware of their status as CIA agents or former employees of the CIA?

Mr. COLBY. Well, as for the former, I cannot say. When they leave CIA and take another job somewhere else, CIA does not follow them or make any arrangements.

As for current employees, any CIA detailee to another agency is revealed to the management of that agency.

Mr. MURPHY. I think we established the fact that there were some detailees of the CIA detailed to the White House; is that correct?

Mr. COLBY. There are; yes.

Mr. MURPHY. Would they be reporting back to the CIA on a regular basis, as to any and all activities within their purview in the White House?

Mr. COLBY. No. I have instructed at least two or three of them that I know of that they are not to report to me what they learn in that job, except to the extent that their current employers want them to do so.

Some of them, as I say, are liaison officers and, for that reason, they are passing on decisions and passing on questions that they want to have studied from an intelligence point of view.

Mr. MURPHY. Are any of your CIA people used as interpreters in high-level discussions between foreign heads of government and our Government?

Mr. COLBY. General Walters has a reputation as one of the foremost interpreters in the world, and he has served, I think, almost every President in that position. He is a military officer. He was an attaché

for a number of years, but since he became the Deputy Director of Intelligence he has, on occasion, served as an interpreter.

Mr. MURPHY. Could we, in executive session, find out—well, I will ask it in executive session.

Thank you, Mr. Colby.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman. I want to pursue for just a moment or two, Mr. Colby, the 1964 activity that Mr. McClory referred to. This has just come to my attention, so I am not very familiar with the material that has been presented to us. But do I understand that the woman who picked up the copies of Senator Goldwater's speeches in the summer of 1964 was an employee of the CIA herself?

Mr. COLBY. Yes.

Mr. TREEN. Employed by the Domestic Operations Division?

Mr. COLBY. Yes.

Mr. TREEN. Who is this woman?

Mr. COLBY. I don't know the name right now, Mr. Treen. I am sure I could find out.

Mr. TREEN. Do we know if she is still employed by the CIA?

Mr. COLBY. She is apparently retired.

Mr. TREEN. She is a retired CIA employee?

Mr. COLBY. Retired.

Mr. TREEN. But she can be identified. We simply don't have her name at this time; is that correct?

Mr. COLBY. She was interviewed in the course of the Watergate hearings, in which I think some of this came up at some point for some reason.

Mr. TREEN. Can anyone at the witness table tell us who she was?

Mr. COLBY. I would like to supply the name. I don't know it offhand.

Mr. TREEN. You will supply the name?

Mr. COLBY. I will supply the name.

Mr. TREEN. I have no further questions at this time.

Mr. MURPHY. Will the gentleman yield to me for one question?

Mr. TREEN. Yes.

Mr. MURPHY. An obvious question, Mr. Colby: Have you detailed any CIA employees to this committee or to the Church committee?

Mr. COLBY. I am not sure about this committee, Mr. Murphy, but I know the Church committee has some former employees on it. But I have no connection with them.

Chairman PIKE. Would the gentleman yield?

Mr. TREEN. I yield to Mr. McClory, who just asked me, Mr. Chairman, for some time.

Mr. McCLORY. When you detail people to the White House, as this person Cooper was detailed to the White House, are the President or the people at the White House advised that the CIA is putting somebody in the White House?

Mr. COLBY. The arrangements are made with the administrative elements there that they send an—

Mr. McCLORY. They are not secretly at the White House?

Mr. COLBY. They are clearly identified. We frequently are asked to send somebody, and Mr. Cooper was a good example. Mr. Cooper was very well informed on Vietnamese affairs and he went over to help the National Security Council staff on Vietnamese affairs especially.

Mr. McCLORY. And then does he report back to the CIA?

Mr. COLBY. No; he reported at that time to the National Security Council staff. I won't say he never had lunch with an old friend, but his lines of reporting and his lines of authority were clear. While he worked over there, he worked for the National Security Council.

Mr. TREEN. Who approved this operation, Mr. Colby, for this employee of the Domestic Operations Division, this woman—who approved her activities in going and getting copies of speeches as an employee and delivering them to Mr. Cooper, or through some other channel which ultimately reached Cooper?

Mr. COLBY. I believe the record indicates this was initiated by Mr. Barnes.

Mr. TREEN. Who is deceased.

Mr. COLBY. Yes.

Mr. TREEN. Did he have to have approval from a higher up?

Mr. COLBY. I don't believe there is any indication that he ever asked for it or needed it.

Mr. TREEN. Would you examine the records to see if you can find if Mr. Barnes left any evidence as to where he got his authority to do this?

Mr. COLBY. I will, Mr. Treen.

[By letter designated "classified" and dated November 19, 1975, the CIA supplied the information requested by Mr. Treen. It is in the committee files.]

Mr. TREEN. I will be pleased to yield to the chairman.

Chairman PIKE. The question was already asked.

Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

I don't know how many questions I can ask in open session, Mr. Colby, but let me ask just a couple of things about the stringers who are paid by the CIA.

When you recruit people like that, is that at their suggestion or at your suggestion? Do you approach somebody that you think would be useful or do they somehow come to you?

Mr. COLBY. Well, both, Mr. Aspin; but any such operation is reviewed very, very carefully by Mr. Nelson, as my deputy for operations. This is not done on the say-so of a subordinate officer somewhere. Full consideration is given to whether the man clearly is not a staff member of a general circulation journal or media, and second, to insure that there would be no influence on the American opinion and press as a result.

Mr. ASPIN. So you don't try to influence his opinion of things that appear?

Mr. COLBY. No.

Mr. ASPIN. How about a foreign publication that might appear in the United States—that is published abroad but is distributed in the United States?

Mr. COLBY. Well, that certainly occurs. I mean you could—

Mr. ASPIN. And, of course, if a story appears in a foreign publication, it might be picked up by a wire service in this country as being a legitimate story?

Mr. COLBY. Yes; it could be at the far end. But I think that is a purely incidental effect of the activity which is conducted abroad, with its objective abroad and with its impact abroad.



Mr. ASPIN. But it is possible at least in these two kinds of instances that something which has an impact abroad, or which is intended to have an impact abroad, could in effect become part of the U.S. knowledge about the subject?

Mr. COLBY. Yes; but on the basis of a number of years experience of seeing this, I can think of very, very few occasions in which any reference was made to any such events initiated by us abroad for a foreign target. There were very few—one or two that I can recall. There was some reference to the fact that some event was alleged to have taken place abroad, but nothing of any prominence, nothing that really substantially misled the American people or anything of that nature.

Mr. ASPIN. Are these people primarily, then, for planting a story abroad, or are they also for giving us information, too?

Mr. COLBY. No; they are primarily for intelligence purposes.

Mr. ASPIN. And might be incidentally for planting a story?

Mr. COLBY. Sometimes, yes.

Mr. ASPIN. When you deal with these people, do they get briefings from the CIA—for example, classified briefings?

Mr. COLBY. We would certainly brief them on behavior so they would conduct their clandestine work satisfactorily and so our relationship would not be revealed.

At the same time, if they are covering some particular foreign situation, one of our officers is obviously going to sit down and debrief them. In the course of a debriefing, they discuss what some target situation is doing, and there is an exchange of views of what that means—what the situation is, what events are apt to take place—and in the course of that, I am sure some information does go back and forth.

Mr. ASPIN. The question is: Is the person who is writing the story knowledgeable about what he is doing—his role in this thing—or does he think he is in fact putting out straight information?

Mr. COLBY. I think we have two things confused now. This is a very complicated area.

In dealing with an intelligence collection agent abroad who happens to have some connection with journals, we will discuss with him the appreciation of what is going on in that area.

If, on the other hand, we come to the conclusion that we want to have a certain event look as though it is taking place abroad, then we might discuss with him just exactly how that should be presented so it will have its best effect in that foreign situation.

Mr. ASPIN. Does it happen that you have on the payroll in some way a person who writes regularly for a foreign publication—a columnist or somebody like that?

Mr. COLBY. For foreign publication, certainly it is possible.

Mr. ASPIN. Would it be part of the normal routine to perhaps slip him information and expect that he would therefore write a column from that information?

Mr. COLBY. On occasion that is possible.

Mr. ASPIN. And are there times when the information that you give him is totally fabricated, with documents that were made up to look like they were authentic when in fact they were totally fabricated?

Mr. COLBY. In fact, I wouldn't say it never happens. But it is a very rare event, because if he is going to be successful in that activity, he has to develop the reputation for reliability that can only come from having a good, solid base of information.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. Mr. Chairman, I would ask unanimous consent to reserve my time.

Chairman PIKE. Without objection, the gentleman's time is reserved for executive session.

Mr. COLBY. Mr. Chairman, I would like to correct one thing I may have misstated in answer to Mr. Treen.

Chairman PIKE. Certainly.

Mr. COLBY. The question of whether Mr. Cooper reported to us. The record is that there were reports filed by him as to his activities in the White House while he was working there, which were filed with our Deputy Director for Intelligence.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

Mr. Colby, why were CIA employees, or why are CIA employees, detailed to the National Security Council?

Mr. COLBY. Well, one reason for instance, is that we detail people to help run the "Situation Room" which handles the incoming intelligence.

We detail individuals to help on the consideration of some of the intelligence or covert action problems that take place. On some occasions, we detail individuals because they are very competent in their field and they are chosen particularly because of their competence. The National Security Council wants to borrow them and use them because of that skill.

Mr. KASTEN. Why are intelligence officers from the Directorate of Operations—the covert part of the CIA—always detailed to the 40 Committee—I mean the covert operation section?

Mr. COLBY. Normally the work is one of maintaining contact, liaison, with respect to those covert operations. An officer deals with that subject and maintains liaison about those matters.

Mr. KASTEN. But isn't the 40 Committee supposed to be advising, or passing judgment, on recommendations for covert operations which would be coming from the CIA? In fact, it would be coming from the CIA Directorate of Operations section—the section that they had just left?

Mr. COLBY. But the 40 Committee are the principals of the committee. The officer who acts as its executive secretary merely processes the material, makes sure that the right information is there at the right time, and things of that nature. He is not making a judgment about the things. That is made by the members of the committee, of which I am one.

Mr. KASTEN. The officer who serves as the executive secretary of the 40 Committee—I understand these are undercover people right now, and we shouldn't use their names—generally speaking leave the DDO, go to work with the 40 Committee, the NSC, and then they come back and they continue working in covert action.

Now, it seems to me there is a conflict when you are sending a person from the CIA, a high-ranking officer in the CIA, who is undercover, and who then goes to work advising on covert operations. Can't he influence decisions? It is not independent judgment in any way. He would have a special interest. In one case, if the timing was right, he

could have developed the plans for a covert operation and then next month become the individual advising the 40 Committee. He is over in the White House with his other hat. Isn't this a conflict?

Mr. COLBY. I don't think so, Mr. Kasten. You take a man who knows something about the subject matter on which he is going to be working—in other words the covert actions. He understands it. He understands how it works, how the machinery works, how the operations take place abroad. He is detailed over there to do the executive secretary's job for the committee. He takes a tour there. He doesn't cut his ties with his career just by going over there for a time. He comes back and gets reassigned to some other job.

During the time he is there, though, it is clear he works for the 40 Committee. There is no doubt as to who he is working for.

Mr. KASTEN. Are the members of the 40 Committee and other staff people aware that their executive secretary is a CIA covert action detailee?

Mr. COLBY. Certainly; no question about that. They know exactly who he is and that he comes from the CIA and, I guess if they are curious they know that he comes from the Directorate of Operations. I don't think there is any doubt about that.

Mr. KASTEN. I would be happy to yield to Mr. McClory.

Mr. McCLORY. I note that there is a rollcall vote and I know we are about to go into executive session. I would like to move at this time, if there is no objection, that we resolve the committee into an executive session.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Dellums?

Mr. DELLUMS. No.

The CLERK. Mr. Murphy?

Mr. MURPHY. Aye.

The CLERK. Mr. Aspin?

Mr. ASPIN. Aye.

The CLERK. Mr. Milford?

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes?

Mr. HAYES. Aye.

The CLERK. Mr. Lehman?

Mr. LEHMAN. No.

The CLERK. Mr. McClory?

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten?

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson?

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike?

Chairman PIKE. Aye.

By a vote of 9 to 2 the committee will go into executive session. We will resume our hearing at 3 p.m.

[Whereupon, at 3 p.m. the committee proceeded in executive session.]



# INTELLIGENCE CONCERNING THE SALT I ACCORD: I

TUESDAY, DECEMBER 2, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Stanton, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel, and Jack Boos, counsel; Emily Sheketoff and Gregory G. Rushford, investigators.

Chairman PIKE. The committee will come to order.

Our witness does not appear to be here so I will use the intervening moments to advise the committee of the status of the three contempt citations—or three contempt resolutions—which our committee approved, as I see them.

As to those which were addressed to the Assistant to the President for National Security Affairs, Mr. Field and Mr. Donner advise me that we have in fact gotten substantial compliance with those two subpoenas; that the information which we sought in those subpoenas has been made available to our staff and to any members of the committee who wish to pursue certain procedures to get it—the procedures being that you go down to the White House.

At least one member of our committee has taken advantage of that and our staff has spent a lot of time down there.

We have the information that we sought.

As to the third subpoena, we have absolutely nothing. It is my intention to go through normal procedures with that resolution when the President is back from China.

I will keep you posted as to what we can do about it at tomorrow's meeting.

Mr. McClory.

Mr. McCLORY. Mr. Chairman, I am pleased with your statement with respect to the substantial compliance with the subpoena regarding the 40 Committee. I was one of those who took advantage of the opportunity to go to the White House—or more precisely to the Executive Office Building—and to examine first hand all of the material which we called for with respect to the 40 Committee information. The only thing I would add is that I would hope that, with respect to the third subpoena relating to a State Department request or recommendations for covert activities, that likewise might be resolved.

In my personal examination of the 40 Committee minutes and proceedings, it seems to me that a great deal of the information requested in the third subpoena is available in the records of the 40 Committee.

From the standpoint of information, it seems to me it is there. From the standpoint of the precise State Department document or communication from the President or the National Security Council—it is not there, of course. But, from the standpoint of information, I think we ought to look carefully at that to see if what we are seeking in the third subpoena is not available through the careful and full examination of the 40 Committee minutes and proceedings.

Thank you, Mr. Chairman.

Mr. MILFORD. A parliamentary inquiry.

Chairman PIKE. Mr. Milford.

Mr. MILFORD. On the procedure regarding the third subpoena, will this necessitate getting a rule or will this go directly to the floor?

Chairman PIKE. This will not necessitate getting a rule. The Chair was in error earlier when he advised the members he thought it was a required process. It is a privileged resolution.

Mr. MILFORD. When does the Chair anticipate this resolution might be on the floor?

Chairman PIKE. I can't honestly answer that question because obviously that is not a decision which the Chair will make. It will have to be made in conjunction with the leadership and I simply do not know the answer.

I do not at this moment precisely know the schedule for the return of the President and the Secretary of State. I expect it is available, but I don't know. I have not yet discussed the scheduling.

Our hearing today is on the basic subject of Soviet compliance with the SALT I agreement and intelligence relating to Soviet compliance with the SALT I agreement.

We have as our witness an old acquaintance of most of us, an old friend of some of us. We are delighted to have you here, Admiral Zumwalt, if you would take the witness chair.

#### **STATEMENT OF ADM. ELMO R. ZUMWALT, U.S.N. (RET.), FORMER CHIEF OF NAVAL OPERATIONS**

Admiral ZUMWALT. Thank you, Mr. Chairman and members of the committee.

I have been summoned by this committee to provide my judgment of the competence of the intelligence community's evaluation relating to strategic arms limitation during my 4-year tenure as Chief of Naval Operations.

Although I am now a private citizen, I am also a retired naval officer, and I would like the record to show that I have kept the Department of Defense informed of the three approaches by this committee or its staff leading to this appearance.

I informed DOD that one major interest of the committee was one of the articles distributed by New York Times Special Features which I have coauthored with Adm. W. H. Bagley, U.S. Navy Retired, who was Vice Chief of Naval Operations until July 1, 1975. This particular article appeared in the Washington Star and was entitled "Soviets

Cheat and We Turn Our Backs." The article is attached to this statement as tab A. It discusses 5 ways in which the Soviets have cheated—one of which is described as possible—on the SALT I deal as this was explained to Congress.

[The article referred to is printed at the conclusion of Admiral Zumwalt's prepared statement.]

Admiral ZUMWALT. In view of my military status, I offered to submit to a briefing by DOD prior to my appearance here. The DOD representative with whom I spoke has informed me it is the Department's decision that I should appear here in my capacity as a private citizen without any DOD briefing.

My statement is therefore being given largely from memory of past events. However, in my capacity as an occasional news analyst, I have gotten information subsequent to my retirement from a variety of sources which I believe to be accurate in updating judgments.

I intend to comment briefly on the quality of intelligence in the field of Soviet conventional maritime capability and in more depth on intelligence in the field of Soviet strategic nuclear capability. In both cases I will give my evaluation of the reasons for the shortcomings in the intelligence field.

## II. INTELLIGENCE IN THE FIELD OF SOVIET MARITIME CAPABILITY

I found myself well served as Chief of Naval Operations in this field. During the 4-year period I can recall no period when I did not feel well prepared by the highly competent naval intelligence specialists who were responsible for keeping me informed in this field.

There were times when these specialists found themselves puzzled by developments, other times when they judged it necessary to put a range of considerable uncertainty on the meaning of their data, but most of the time they expressed reasonable confidence in their judgments and proved to be right.

An outstanding example was the willingness of the naval intelligence community to go out on a limb and state flatly that the first Kiev class aircraft carrier, the first true Soviet aircraft carrier, was in fact a carrier many months before the national intelligence community was ready to accept that judgment.

However, I had the University of Rochester's Center for Naval Analyses do an analysis of the performance of the national intelligence community in the maritime field during the early part of my tenure as CNO. They were to examine the intelligence community's early forecasts of what Soviet naval force levels would be, in a given year, in comparison to what these force levels actually were when that year arrived and we could then count the Soviet ships. We found that these forecasts were in almost all cases too low and that the Soviet Navy almost always had more ships when the time arrived than intelligence had estimated. This committee may want to request that analysis to see for itself.

I believe that the reasons for these generally low forecasts are:

(1) A general and natural human tendency on the part of forecasters to err in favor of lower estimates because of congressional and press assertions that intelligence always estimates too high;

(2) Soviet success in hiding many of their defense expenditures in other budgets and thus misleading us as to their total naval expenditures;

(3) An error in CIA's Soviet-defense-cost-estimating model which understated the value of the naval hardware we saw the Soviet deploying and therefore distorted our forecasts for the future;

(4) And, finally, a bias which stems from this administration's failure to understand Soviet strategic objectives, specifically the objective of achieving overall military superiority over the United States and their willingness to expend the resources necessary to achieve it.

### III. INTELLIGENCE IN THE FIELD OF SOVIET STRATEGIC NUCLEAR AND RELATED FORCES

Here, I think one must divide the analysis into three phases:

- (1) Forecasting before SALT I.
- (2) Forecasting during SALT I.
- (3) Forecasting after SALT I.

#### FORECASTING BEFORE SALT I

Before SALT I, intelligence in the strategic field had to be almost exclusively derived from traditional sources. These forecasts were in my judgment almost universally understated for reasons similar to those cited for the field of maritime intelligence.

In addition, I believe that the intelligence community and the policy community both fell prey to the false assumption that the Soviets would in some way be responsive to frequently expressed hopes of U.S. policymakers that the U.S.S.R. would not go beyond the U.S. strategic force levels in an effort to work toward mutual deterrence.

The fact is that mutual deterrence has never been a part of Soviet strategic doctrine, which as I suggested earlier is one of commitment to military superiority in strategic and conventional forces.

The Soviets, of course, have not been responsive to such suggestions and, as a result, their force levels have turned out to be higher than U.S. estimates which may have been biased through optimism. The best unclassified work on the matter of U.S. underestimation of Soviet strategic forces is Albert Wohlstedter's article in the December 1974 Foreign Policy magazine entitled "Is there an Arms Race?" He points out quite accurately that "in spite of the myth of invariable overestimation, we systematically underestimated the number of vehicles the Russians would deploy \* \* \*."

#### FORECASTING DURING SALT I

During the negotiation of the SALT I agreements, the Soviets, though careful to give us no information on their actual or planned deployments, were providing the United States with important information concerning their concepts and intentions in the strategic field. This information became available in bits and pieces at all levels of the United States and Soviet SALT delegations. All of this information was carefully recorded and reported back to Washington where it was available to both policymakers and intelligence analysts. The information that came to the intelligence analysts in this way was use-



ful, in conjunction with information received from other sources, in evaluating overall Soviet programs and Soviet intentions.

Unfortunately, there was another and more important source of information which could have much improved the accuracy of intelligence but which was generally denied the intelligence analysts. This was the large number of exchanges between Kissinger and Dobrynin, or Gromyko, through back channel traffic or private contacts to which the intelligence analysts as well as almost everyone else in Government were denied access.

I know that the Joint Chiefs of Staff were not informed. Indeed, it is my belief, which should be confirmed with Melvin Laird, that not even the Secretary of Defense was privy to these exchanges. One has only to read John Newhouse's book, "Cold Dawn: The Story of SALT," written using data provided Newhouse from NSC files to which DOD had not been privy, to realize the extent to which key policymakers in the executive branch were deceived about the course of policy formulation in the absence of this back channel information and other information. But what that book does not highlight is the extent to which intelligence analysts were misled by being denied material facts and therefore the extent to which their forecasts were made less accurate as to Soviet intentions.

This deliberate decision by senior policymakers to deny information to intelligence analysts meant that the policymaker put himself in the following interesting position. He had to review intelligence estimates prepared without access to data he had withheld. He then had to judge, if he could without being an expert intelligence analyst, how to compensate for these flaws, having in mind the information he had withheld.

The policymaker put himself in an even more difficult position, however, by failing to include responsible officials of Government in the negotiating process. There is clear evidence to support the fact that the important officers of the Soviet Government, whether Foreign Ministry, Defense Ministry, or Missile Production Ministry, were fully involved in the decisionmaking process.

For example, on the last evening before the signature of SALT I, when the final critical changes were negotiated between Kissinger and Gromyko, Smirnov, the senior Soviet missile production man, was in the room protecting the options of the Soviet strategic force construction program while Kissinger had not a single defense or technical man there. This session represented the culmination of a series of decisions made on the Soviet side with full technical and defense input and on the United States side with systematic exclusion of such input in the final decisionmaking in the Oval Office or in the disorganized White House office at summit meetings.

The exclusion of defense and technical expertise on our side and the inclusion on the other side not only gave enormous advantage to the U.S.S.R.; it further compromised the accuracy of U.S. intelligence estimates because the analysts had to use the technical explanations of nontechnical people to interpret what had happened—if they were told anything at all. The differing approach of the two countries to the negotiations reflected this difference in objectives I mentioned earlier.

The Soviets viewed the negotiations as a vehicle for advancing them to their goal of strategic superiority and judged it essential to prevent the agreements from interfering with existing plans for a massive expansion of their strategic forces. They succeeded admirably in this. They have been able to expand massively despite the agreement.

The United States, on the other hand, looked on the agreements as an end in themselves, agreements to foster the process of détente, and were ill served by them as a result.

#### FORECASTING AFTER SALT I

After SALT I was signed and during the efforts to negotiate SALT II, the job of the intelligence estimator became even more difficult. He still had to contend with the problems of partial information and flawed explanations of technical information. But now, in addition, he had to deal with the political aspects of the commitment of the administration to the success of SALT I. In my judgment, the political factors led to a series of policy decisions, designed probably to protect SALT I from criticism, but which seriously complicated the job for the intelligence community.

For example, in June 1973, the Russians told United States personnel in the Standing Consultative Commission about an agreed interpretation between the U.S. and U.S.S.R. concerning the definition of a modern ballistic missile designed to patch up some of the hastily negotiated and ineptly worded language in the interim agreement.

This information was sent back to us by U. Alexis Johnson in a private message to the White House, which subsequently got around to the rest of the community. He, of course, knew nothing about it. The whole administration looked somewhat flustered. On checking with DOD and State, no one knew of the existence of the agreement.

Finally, the National Security Council's files produced this secret agreement, signed 11 months earlier.

For my purposes today, it is unnecessary to dwell on the fact of a secret covenant so secretly arrived at that not even the Secretary of Defense knew about it. And, indeed, not even the Congress was informed about it when they were being asked to ratify the SALT I deal although, of course, the White House knew about it.

It is relevant to intelligence analysis to state the fact that a gaping hole in this technical agreement, drafted by nontechnical people, could have permitted the U.S.S.R., to justify a large number of additional modern ballistic missiles on their submarines, and that the United States had to pay something at the negotiating table to close off the loophole. But the most important fact is that for 11 months the intelligence community had been denied the most valid explanation of what the Soviets were up to with regard to their development of the KY-9 or, as it later became known, SSNX-13, a new, modern ballistic missile which would have qualified for deployment in diesel submarines under the badly flawed White House agreement.

Similarly, when we began to pick up information about possible Soviet cheating on the basic agreement and the supporting agreed understandings and that the Soviets were doing things that we had

said, in unilateral declarations, we would not accept, the job of the intelligence analyst was hindered by the White House.

For example, it is my recollection that in September 1973 a number of us within the Government began to urge that through the SCC and other contacts the Soviet Union be confronted with the evidence of their misbehavior.

This was not done by the time I retired even though in June of that year a DIA analyst had briefed us on the fact of ABM radar violations on the part of the Soviet Union. It is my understanding that these kinds of efforts on the part of the Department of Defense, to get the information, were handicapped in two ways; that is, first, there was a continuing effort to make less severe the intelligence description of what the cheating involved, and, second, there were long delays in reacting and, finally, something on the order of a year after the initial requests were made we had something back from the Soviets which was accepted, in my judgment, inaccurately, as their assurance that they were not cheating.

It is my recollection that in March of 1974 Kissinger received a recommendation that the problem of Soviet cheating be faced up to and that he subsequently received a memo signed by Deputy Defense Secretary Clements which recommended that the issue of Soviet violations be placed on the agenda of the verification panel.

It is also my recollection that some fairly unimportant issues concerning cheating were raised within the SCC but SCC was not permitted to distribute the Soviet answers.

It is also my recollection that we were led to believe that the more important cheating issues would be discussed between Kissinger and Dobrynin. As of the time I retired, to the best of my knowledge and belief, neither the intelligence community nor the JCS had been kept informed of these private discussions with the Russians concerning these violations. Again, the information which was derived from the discussions, if any, was not, to the best of my knowledge, made available to the responsible intelligence analysts where it could have contributed to their evaluations of Soviet intentions and capabilities.

Finally, the most worrisome aspects of the post SALT I phase has been the increasing Soviet interference with the U.S. intelligence collection which Admiral Bagley and I did not discuss in our articles because it had not yet gotten into the public domain. However, now that it has, this interference has to be listed as a fifth or sixth form of Soviet cheating.

You will recall that the administration stressed heavily in the hearings urging congressional ratification of SALT I that both sides were pledged not to interfere with national means of detection and that the United States was satisfied that it could monitor the agreement satisfactorily in this way. In order to develop this point more fully, Mr. Chairman, I think we should go into closed session, but let me state publicly that in my judgment there have been significant violations of the SALT I agreements by the Soviets in their interference with our national means of detection which have produced a serious reduction in our ability to check against Soviet cheating. This interference makes it easier for the Soviets to claim they are not cheating, harder

for the United States to prove that they are, and is in and of itself, the most positive indicator among many positive indicators, that the Soviets are violating the SALT I agreements.

#### CONCLUSION

It seems to me that there are the following conclusions to be drawn from the foregoing.

The intelligence estimator, at best, with the benefit of every insight he can acquire, has a tough job. When policymakers, for whatever reason, elect to deny these intelligence estimators important insights they have acquired, the intelligence process suffers.

When these policymakers exclude from their counsel technical competence, in making specific deals, quite apart from the disadvantageous negotiating outcome, the intelligence estimator gets flawed technical insights.

And finally, when the policymaker decides that it is more important to carry on the perception that a deal is working satisfactorily than it is to test Soviet performance by tough questions and by using intelligence to test the answers, then the United States is bound to be getting less than optimum performance from its investment in intelligence and serious policy errors are likely to occur. Moreover, the lead time the United States would have to react to counter Soviet cheating with necessary R. & D. force levels or foreign policy actions is reduced.

Thank you, Mr. Chairman.

[The article by Admiral Zumwalt and Mr. Bagley referred to as "Tab A" follows:]

[From the Washington Star—Aug. 10, 1975]

#### "SOVIETS CHEAT, AND WE TURN OUR BACKS"

(By Elmo R. Zumwalt, Jr.<sup>1</sup> and Worth Bagley)

Soviet violations of the SALT I anti-Ballistic Missile Treaty and Interim Offensive Agreement signed in Moscow in 1972, together with President Ford's acceptance of the violations, have created a new strategic arms relationship—one that is appreciably different and less desirable than the one defended before the Congress, and one which has no congressional sanction.

The process of public discovery of this evasion of the constitutional process is a fascinating demonstration of the democratic system at work.

In the fall of 1974, Admiral Zumwalt wrote a letter to Melvin R. Laird, former secretary of defense, pointing out that press information indicated the Soviet Union was violating the SALT understandings by deploying missiles heavier than were permitted. In December 1974, Laird replied that "There is no question that if information is available indicating that the SS-X-19 missile deployment will go forward in 1975 with a volume 50 per cent greater than the EE-11, such deployment would be in violation of the 1972 interim agreement unless . . . amended."

By the summer of 1975, Laird was writing that the U.S.-Soviet SALT I Treaty "explicitly forbids testing any radar for ABM use . . . yet . . . the Russians have cheated on the treaty." Laird further stated that "the Soviets have cheated on . . . the clear American understanding that neither side would appreciably increase the size of the intercontinental ballistic missiles."

<sup>1</sup> Admiral Zumwalt, chief of naval operations from 1970 to 1974, retired last year, but has continued to be outspoken on defense issues, especially in warning of a growing Soviet threat to the ability of the U.S. Navy to control the seas. Admiral Bagley retired this year after serving as vice chief of naval operations.

This article was distributed by New York Times Special Features. 1975 Elmo R. Zumwalt, Jr. and Worth Bagley.

Regrettably, when asked on June 25 about the Laird article, President Ford erroneously reported that the Russians "have not used any loopholes, and in order to determine whether they have or they haven't, there is a Standing Consultative Group that is an organization for the purpose of deciding after investigation whether there have been any violations, and (it) came to the conclusion that there have been no violations."

Properly alarmed, two Senators sought to correct the public record. Sen. Henry Jackson immediately issued a statement expressing surprise at the President's answer in the light of information from the director of the CIA and the secretary of defense. Sen. James Buckley said that Ford's "statement ignores the enormous amount of intelligence" concerning a "persistent pattern of apparent Soviet violations of numerous elements of the first round Soviet accords and the ABM Treaty." Admiral Zumwalt subsequently agreed with Laird, Jackson, and Buckley and disagreed with the President.

Why is it that four honorable men can take a position which disagrees so markedly from the account presented by an honorable President? The answer lies in the terrible complexity of the strategic agreements and in the Byzantine nature of the negotiation process used by Secretary of State Henry Kissinger.

The original SALT agreements were a patchwork of shockingly loose language, with loopholes big enough to drive a truck through. They came about in the following way.

The two sides, over many months, argued over the language of the prospective strategic contracts. As the Moscow Summit of May 1972 approached, President Nixon and Secretary Kissinger found themselves under pressure to bring home the deals to which they had committed themselves a year earlier. The re-election campaign was bearing down upon them.

Under this pressure, both men made numerous attempts to win support within the Executive Branch for the draft language which the Soviets had indicated they would buy. But Secretary of Defense Laird and the Joint Chiefs were unwilling to leave obvious loopholes in the language.

Nixon and Kissinger knew that such reservations would come to light in congressional hearings during the approval process. The device hit upon to allay defense concerns without actually clarifying the language was to arrive at separate interpretive statements, initiated by both the U.S. and Soviet delegations, as well as other "understandings" which were not set down formally. In those cases where the Soviets would not agree formally with the proposed interpretive language, the U.S. issued "unilateral declarations" construing key provisions in the agreements, and stating that Soviet conduct at variance with those U.S. statements would be considered inconsistent with the agreements.

President Nixon and Secretary Kissinger gave the strongest kind of assurances to witnesses in the Executive Branch who were scheduled to go before Congress, that the U.S. would insist on meticulous Soviet observance of the "agreed interpretations" and "unilateral declarations." The testimony of these witnesses, the language of documents presented to the Congress, and the assurances given by the President and Kissinger in their briefings to the congressional leadership and the press, represented this patchwork deal with the Soviets as much more precise than its terms warranted.

Kissinger, in June 1972 briefing to congressional leaders, categorized the interpretations as assurances that we had succeeded in placing a limit on expansion of the Soviet strategic forces. There is no question Congress believed it was approving strategic arms limitations of a precise nature which the administration was committed to enforce.

Viewed in this light, President Ford's reply on June 25 is seriously misleading in several ways. The Soviets have violated the basic contracts, the attached protocols, the agreed interpretations, and the unilateral declarations.

The U.S. has protested to the Standing Consultative Commission (SCC). That group—the President's answer notwithstanding—is not an investigative or fact-finding body, nor can it form conclusions about violations. It is essentially a negotiating forum, containing U.S. and Soviet members. Many senior U.S. officials have spent hours in private and in official councils deliberating Soviet violations. In the SCC meetings the Soviets have lied to us, until confronted with unarguable evidence from our intelligence community. In contrast to what the President has said, this is the picture with which the commission has been presented:

The USSR continues to deploy the SS-19, a missile 50 per cent larger and three to four times heavier in throwweight than the SS-11 it replaces, and therefore

in clear violation of the U.S. declaration that such deployment would be inconsistent with the Interim Agreement. We are acquiescing to Soviet acquisition of greatly increased throwweight—in direct contradiction to what the administration told the Congress the 1972 agreement would accomplish.

We complained of this Soviet action in the SCC. The Soviets continued their SS-19 deployments. We then told them that we would be very disturbed if they committed still larger violations by deploying missiles even heavier than the SS-19. In this way the U.S. effectively condoned Soviet cheating on the contract approved by the Congress. But Congress has not ever been informed of this action which substantially amended the agreement the Congress earlier approved.

The Interim Agreement specified that missile silo dimensions would not be increased more than 15 per cent. Our negotiators made it clear that this meant an increase of 15 per cent in one dimension. Congress approved the agreement with this understanding. The Soviets have violated the 15 per cent limitation. They have argued that all silo dimensions can be increased by 15 per cent, which would give them silos 50 per cent larger in volume than before. But Congress has not been officially informed of these violations or asked to approve the new strategic relationship which derives from failure to redress the violations.

The Soviet violation of the ABM treaty's prohibition against upgrading air defense is most serious. By testing unauthorized radars in an ABM mode, they have violated the treaty. After we protested the ABM cheating, they stopped their testing. But no one can be sure that the Soviets haven't, by that cheating, already learned what they need to know. Assurances previously given Congress about Soviet inability rapidly to expand their ABM network beyond authorized limits are, at a minimum, less valid as a result. But Congress has not been so informed.

There have been other actions by the Soviets sufficiently serious to warrant a protest to the SCC, such as development and possible deployment of land-mobile ICBMs which the U.S. specifically stated would be inconsistent with the objectives of the Interim Agreement; violations such as the construction of silos in greater numbers than authorized under the treaty. These violations have been protested. The protests have been ignored, or the facts denied, or the claim made that the activity is allowed by loopholes in the agreement's language. Again, the Congress has not been officially informed.

Thus, with another summit set for later this year to flesh out another ambiguous strategic arrangement loosely agreed upon by President Ford at Vladivostok, there are major, unexplained issues which must be resolved by the Congress:

What is the long-term value of the administration's formal interpretations and assurances to Congress?

How can the Congress fairly deliberate upon the consequences of a new strategic relationship when the existing one has been changed in major and disadvantageous ways by Soviet disregard of the contracts as they were explained by the President?

Does the President have the authority to redefine Soviet obligations under existing agreements in a way that significantly alters the strategic balance without consulting with the Congress?

How can the U.S. continue to vest its security on such imprecise contracts?

Let us now examine the deal currently in the making. At Vladivostok, in his first act of summitry, President Ford achieved what was called a great conceptual breakthrough. It was announced that both sides had agreed to have 2,400 strategic delivery vehicles and 1,320 MIRVed (Multiple Independently Targetable Reentry Vehicle) missiles. This was made to appear responsive to the Jackson Resolution which told the U.S. administration in essence: "Don't come back again without strategic parity."

But when we examine the fine grain of Vladivostok it is clear that the relationship that will result from the "breakthrough" is a four-fold superiority in missile megatonnage for the Soviet Union and a 2.7-fold superiority in missile warheads when the Soviets complete deployment of their huge new systems. These advantages for the USSR are similar to the ones the U.S. had at the time of the Cuban missile crisis—when both sides clearly perceived U.S. strategic superiority.

But not content with this advantage, the Soviet Union—this time in advance of the submission of a contract of the U.S. Congress—is in the process of modifying the Vladivostok accord.

First, possibly as a result of sloppy negotiating, the U.S. may not be able to count as a strategic vehicle the Backfire, a Soviet intercontinental bomber. We

say "possibly" because there continues to be evidence that Secretary of State Henry Kissinger secretly gave away Backfire even before Vladivostok. In his December 1974 backgrounder, and on return from Vladivostok, he told reporters it had been agreed that Backfire would not count against the Soviets' overall limit.

When a majority of NSC members objected to this one-sided concession, Kissinger "reversed" his position; and when the December backgrounder was, several months later, pried from his office under the Freedom of Information Act, it was noted that the text had been altered to eliminate Kissinger's earlier admissions on Backfire.

Our SALT delegates at Geneva continue to argue that Backfire should be included. But the knowing smiles of the Soviets suggest that Kissinger's earlier deal remains intact.

As bad as the Vladivostok asymmetries are for us, Russia's 2.7-fold missile warhead superiority represented an upper limit as long as the 1,320 ceiling on MIRVed missiles remain verifiable. Under fire from critics of the Vladivostok summit, Kissinger in December 1974 assured us that the U.S. would not enter into any SALT II agreement without tough verification provisions. He went so far as to say that, "If the Soviets reject our verification formula, it is very hard to conceive how there can be a deal."

The Soviets have rejected Kissinger's verification formula, stating that verification provisions are not needed. They hint they might accept a weak verification provision if we pay for it with other concessions. Thus, although U.S. experts all agree that nothing weaker than the current, already watered down U.S. verification proposal will work, the Soviets seek to plant the seed of future ambiguities in the forthcoming deal—ambiguities which would make it possible for them to MIRV all of their missiles, not just the authorized 1,320.

Logically we could expect the Soviets, after rendering largely meaningless the "parity" of 2,400 strategic vehicles by excluding from their total the Backfire bomber, to imbalance the relationship still further by cheating and proceeding to MIRV most of their 2,300 ICBMs.

This is where Soviet cheating under SALT I and our attitude toward it become relevant to the Vladivostok negotiation. The administration's decision not to disclose Soviet cheating on the contracts approved by the Congress in SALT I is a grave blow to those who believe in continuing sensible arms control arrangements. It destroys U.S. leverage to achieve resolution of "ambiguities." It emboldens the Soviets to fight still harder for even greater ambiguities in future agreements. It puts the Ford seal of approval on very bad Soviet conduct. And it makes unlikely any real teeth on verification.

There remains to be explored the question of why and how President Ford has failed to focus on the differences between the agreements as portrayed to the Congress, in contrast with the way they have been accepted in practice by the administration.

The question is how Ford has been misled. It is, we think, the result of his being relatively isolated from other experts in these matters by the duality of Kissinger's role. Receiving information from his secretary of state—Henry Kissinger—on the one hand, which is vetted and validated by his assistant for national security affairs—Henry Kissinger—on the other, has destroyed the natural give and take designed to prevent a President from becoming captive to a single view. Of course, there is nothing in theory to prevent Henry Kissinger from providing accurate information to the President.

The rise and decline of Henry Kissinger must be discussed in four phases. His character has not changed but his attitude toward his job has modified remarkably as his power has increased.

Phase I was the objective phase. Soon after Mr. Nixon was elected he brought Gen. Andrew Goodpaster to Washington to work out with Kissinger a formal system for the National Security machinery to supersede the very loose system which both Presidents Kennedy and Johnson had preferred.

The system which Goodpaster and Kissinger recommended was designed to bridge the interface between the various agencies to insure that all were represented, all had their "day in court," and that an adversary process existed to distill the issues. Organizational entities, appropriately constituted with membership from responsible agencies, were created to accomplish these objectives—the Washington Special Action Group; the VP (Verification Panel) to deal with arms control issues; the SRG (Special Review Group); The Forty Committee in the covert intelligence field. Each of these organizations had a different charter.

There were members who had seats on several of these organizations. Kissinger emerged as the chairman of each of these committees.

Kissinger's job was to compile alternatives, listing the pros and cons of each, and to distill in that way the complex issues in order to make it possible for a busy president to make decisions.

In Phase I, the system worked reasonably well. Henry Kissinger, in the proper subordinate role, presented balanced views and distilled the issues fairly.

Phase II began in 1970, after the shakedown period was over and the players began to become familiar with their assignments. It continued until the election of 1972. This phase was characterized by an increasing power struggle. Kissinger had been discovered by the press. He began spending long hours with chosen reporters and commentators, giving brilliant dissertations on foreign policy issues. "Frank" revelations of the president's thinking were made. Bureaucratic struggles were described. The problem that a "highly qualified" national security assistant had in dealing with an "unsophisticated" secretary of state was subtly demonstrated. The problem that the same NSC assistant had in "controlling for the president" a secretary of defense (Laird) with an independent power base in Congress was gently revealed. If the reporter was of the left he heard of Kissinger's battles with the right; if of the right, of Henry's battles with the left.

Delicately, the web was woven. The stories of Kissinger's successes began to emerge—at first in tandem with praise for Mr. Nixon, and later increasingly presented as single handed achievements by Kissinger. As the press image began to develop, Kissinger felt more and more confident that he had an independent power base. There was a gradual erosion of the Goodpaster staff system. Kissinger began to by-pass the system.

Important communications were set up between Moscow and Peking to which no one except the president was privy. As an example, the announcement of the conceptual breakthrough in SALT I, issued in May 1971, came after four months of back-channel discussions between Soviet Ambassador Anatoly F. Dobrynin and Kissinger. But Kissinger misled the responsible agency, the Verification Panel, two days before that announcement was issued, so that its members had no inkling of the major accommodation about to occur—and of course, none of the participation which their staff function had been set up to produce.

These by-passings became more frequent. And in most cases, the decision represented a *weakening* of U.S. positions as Nixon and Kissinger pressed to achieve SALT I prior to the '72 election.

Some of these decisions from on high led to the emergence of "ambiguities" in the SALT agreements. Staff protest of these decisions led to some of the "agreed interpretations" and "unilateral declarations" with which Kissinger, after the fact, sought to regenerate support for risky decisions.

SALT I was achieved. Assurances were given to all that U.S. firmness of purpose would insure Soviet performance. But even as the ink was drying on SALT I agreements, the ambiguous language which had resulted from by-passing the system began to haunt Kissinger.

For example, the U.S. SALT delegation and his own NSC staff concluded that identification of the specific "older" launchers that the agreement allowed the Soviets to trade in for modern submarine-launched ballistic missile launchers was dangerously vague.

Kissinger went to Dobrynin and executed, without informing anyone in the chain of responsibility, an "agreed clarification." This specified that "launchers of older ballistic missiles on diesel-powered submarines . . . cannot be used for purpose of replacement." This language was intended to make clear that the Soviets could go from 740 to 950 SLBMs only by retiring 210 older land-based ICBMs.

At the same time, however, this "clarification," executed in secret and without proper agency scrutiny, created a new loophole by defining a modern SLBM as one "deployed on a nuclear-powered submarine commissioned since 1965." This wording would have made it possible for the Soviets to build any number of diesel submarines and install new nuclear missiles on them.

In 1973, the rest of the U.S. government discovered the "secret covenant, secretly arrived at" when the Soviets told our SALT negotiators about it 11 months after the fact. We paid a price to renegotiate this sloppy clause.

By the end of Phase II, Kissinger had risen so high in public esteem that Richard Nixon, H. R. Haldeman and John Ehrlichman jealously were about to return him to private life in the first blush of re-election victory. These personal



tensions between Kissinger and Nixon provided a check on the power the former had acquired.

Phase III began with Watergate and continued to the resignation of Nixon. Early in this period, in one of those dramatic reversals of fate, Kissinger was made secretary of state, while keeping his assignment as national security assistant. This appointment was designed to restore a tarnished presidential image with Kissinger's reflected glory.

The appointment intensified a phase characterized increasingly by the most severe misuse of his position. Kissinger's ego and his president drove him to continue foreign policy "successes." Now, at last, Kissinger had the legal authority to match the responsibility he had assumed through his committee chairmanships.

During this phase, a number of dedicated public servants concluded that they could no longer serve under such a system and, in varying ways, began to terminate their services. As the June-July 1974 Moscow summit approached, the distinguished Paul Nitze terminated his service, stating publicly that he could no longer see how arms control negotiations could be carried out until respect for the Constitution was restored. This resignation and other opposition led Mr. Nixon, with his eye on the need for anti-impeachment votes, to pull back at Moscow. He refused to sign an agreement which would have signaled permanent strategic inferiority and limited himself to a conceptual agreement on the test ban.

Kissinger, in implicit protest, issued his famous lament: "What in the name of God is the meaning of strategic superiority? What do you do with it?"—forgetting in his eagerness to gain a negotiating objective that you use strategic superiority to back the other side down in a crisis as in Cuba 1962; forgetting that with it you frighten the allies of the inferior superpower into changing their political relationships.

Phase IV began with the accession of Mr. Ford to the presidency. Ill-prepared in the foreign policy field, having in his first year to concentrate on restoration of domestic tranquility, Mr. Ford chose initially to keep Kissinger on both jobs. Ford was aware of the increasing congressional distrust of Kissinger's word and policies. But to date, he has chosen to support Kissinger.

He has been ill-rewarded. The information Kissinger provided which led Ford on June 25, 1975, to deny any violations of SALT was badly misleading. It is inconsistent with Kissinger's private admission recently that the Soviets lied to us at the 1972 summit when they assured us they would only deepen (not also widen) their silos and by not more than 15 per cent.

At this point, in order to avoid continuing Soviet strategic superiority, real and perceived, and to evaluate Soviet performance and integrity in the strategic portion of detente, there are major actions that need to be done to redress Kissinger's disinformation campaign and to insure that the President and the public are aware of the facts:

First, Congress should hold hearings to measure the performance of the Soviet Union in Salt I against the assurances the administration gave the Congress when the agreements were ratified, in order to have a basis for judging what might occur under SALT II.

Second, the President should reduce his risk of being misled in the future by terminating the dual status of Henry Kissinger and installing a new national security assistant in whose honesty the country and the Congress may have full confidence.

Chairman PIKE. Admiral Zumwalt, that is rather heavy and disturbing testimony. I am one of those who joined with, I think, the vast majority of Americans in hailing the execution of the SALT I agreement. Is it your judgment now that this Nation would be better off or worse off if there were no SALT I agreement?

Admiral ZUMWALT. The first point I would like to make, Mr. Chairman, is that I also was among those who felt that the effort to achieve strategic arms limitations was an important one, having been a Director of Arms Control as a captain in the Navy and having worked to achieve the test ban which has been a sound treaty.

It is my view that the United States entered an era when we had the opportunity to achieve significant reductions in strategic arms expenditures, at parity, had we negotiated skillfully and had we remained tough and firm with the Soviets.

I believe that the deal that was arrived at to achieve the SALT I Treaty and interim executive agreement was one that represented the absolute maximum in compromise on the part of the United States and the absolute minimum in compromise on the part of the Soviet Union, and that we were accurate in testifying before the Congress that it represented for that moment in time an asymmetrical parity. They had some advantages; we had some advantages. We were prohibited from overcoming theirs; they were not prohibited from overcoming ours and we made it clear it was mandatory that the strategic budget of the President be supported in subsequent years if SALT negotiators were going to be able to conclude a good deal, at parity, and hopefully at reduced expenditures.

Regretfully, the Congress did not pass those strategic budgets and therefore the negotiators, in their own words, lost negotiating wampum.

Even more regretfully, in my judgment, the administration has elected not to inform the Congress of massive violations of the deal as it was explained to the Congress. That is, the Congress was assured that there was not only a treaty and interim agreement; there were not only bilateral supporting documents to which both sides had agreed, but the Congress was also assured there were unilateral declarations by the United States as to the conduct we would not accept from the Soviet Union in order to make sure this deal made sense instead of becoming a grotesque mockery.

In actual fact, the Soviet Union has, in my judgment, violated the basic treaty, the supporting agreements, the unilateral declarations, and this administration has never informed the Congress in any official way, other than in answer to questions before a subcommittee of the Senate, prodding questions of these massive violations and therefore we now have a new strategic arms relationship, one of which the Congress has never been informed; one in which the Soviets have great advantages over the one the Congress thought it approved.

In my judgment, the country is worse off than it would have been had we continued to try to work toward parity and expending the necessary sums to insure the Soviets joined us in reducing expenditures.

**Chairman PIKE.** Admiral, one of the things which I think concerns all of the members of this committee is the allegation that information of this gravity is systematically withheld from Congress.

I am particularly interested in your statement on page 8 to the effect that at the time the SALT I agreement was being sold to Congress, there was in existence a secret agreement which not only was the Congress not told about, but you also know that the Joint Chiefs of Staff were not told about it and you believe that the Secretary of Defense was not told about it, is that accurate?

**Admiral ZUMWALT.** That is correct, sir.

**Chairman PIKE.** I find this incredible.

You go further and state that this secret agreement allowed the Soviets to do certain things with their old submarines, to our detriment. Did it allow us to do the same things to their detriment?

Admiral ZUMWALT. No, sir; it did not.

The agreement was apparently signed because of the fact that Mr. Kissinger recognized that among the many sloppy loopholes that had been left in the original SALT I arrangement was one that made it possible for the Soviet Union to turn in the relatively unsophisticated and obsolescent "G" class missiles on their G-class submarines as part of the compensation as they built up to the huge advantage they were given in sea-based missiles.

They had to destroy 20 percent of their 60 percent advantage in land-based missiles in order to go up to the authorized 33 percent advantage in sea-based missiles.

Because of sloppy drafting, they could turn in about 70 missiles from their "G" missile submarines.

This fact having been observed, Mr. Kissinger apparently went in secret to Dobrynin and worked out an interpretive agreement which was designed to close off the Soviet right to use those G-class missiles as compensation and did so, but, because of, again, dreadfully technically sloppy drafting, drafting which should have been cleared with technically competent people in the Department of Defense and the Secretary of Defense and the Joint Chiefs of Staff, left a great big truck-sized hole in the interpretive statement that would have authorized the Soviets to install missiles—on diesel submarines—of a new type just as long as they had never been installed on a nuclear submarine built since 1964.

Chairman PIKE. Without any limitation?

Admiral ZUMWALT. There is some disagreement as to whether or not they could have gone up to just 210 missiles or whether they could have gone up to any number. At the very least, they were authorized, under this sloppy wording, 210 additional missiles.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I am very interested in your testimony. You have referred to an article which you coauthored, as well as other articles which charge the Soviets with violations of SALT I.

First of all, Admiral, at the present time you are in civilian life and you are either a candidate or you intend to become a candidate for public office—I think for the U.S. Senate—is that right?

Admiral ZUMWALT. I am in what is called "the testing stage." Perhaps you can tell me whether that is a legitimate political phrase. I expect to make a decision by February or March as to whether or not to run for the Senate in the State of Virginia.

Mr. McCLORY. It seems to me from your testimony you feel that if you had been Secretary of State and negotiating the SALT I agreement, you would have done it quite differently, and we would have a much better understanding today with the Soviet Union.

Admiral ZUMWALT. I think if you will check my answer, Mr. Congressman, I said from where we are at now I believe we would have been better off had we not done so; but that is in the light of our failure to inform the Congress and our failure to call the Soviets on their cheating.

Mr. McCLORY. You criticized the negotiations. You feel that, in addition to the people the Secretary had in the room with him, he should have had other personnel there—defense personnel and perhaps you—

at the time he was negotiating, because Dobrynin or the Soviets had military personnel advising them.

Now, you do criticize that, don't you?

Admiral ZUMWALT. I do; yes, sir.

Mr. McCLORY. You also criticize the fact that Secretary Kissinger was using an interpreter whose native language was Russian instead of a man whose native language was English, don't you?

Admiral ZUMWALT. I don't raise that. However, I do consider that a serious flaw; yes, sir.

Mr. McCLORY. In these private discussions with the Secretary and Mr. Dobrynin, isn't there an agreement with respect to confidentiality which they subscribe to so that this business of reporting what Mr. Kissinger said and what Mr. Dobrynin said would be a violation of that confidence—if all the reporting that you would like was done?

Admiral ZUMWALT. Absolutely not. All I am suggesting is that the United States should give itself the same efficiency that the Soviet Union gives itself. They had their missile production chief Smirnov in the room. We didn't have a single technically competent man in the room and therefore it is no wonder that the Soviets were able to achieve an agreement that was full of ambiguities.

Mr. McCLORY. You would have done it quite differently.

Now, why don't you make yourself available to become Secretary of State instead of running for the U.S. Senate? Then you could correct all these things that you find fault with in Secretary Kissinger's administration.

Chairman PIKE. Will the gentleman yield to me just very briefly?

Are you sure there is a vacancy?

Mr. McCLORY. I have an idea that with many of the attacks on him, the Secretary of State might be very happy to turn over the reins to someone else.

Let me say this: We criticize the fact that the Soviets have taken some of these missiles and they have put them on old-type submarines that they had, and we have let them get away with doing that on the basis that that is the way they wanted to interpret part of the agreement—we sort of acquiesced in that; is that about right?

Admiral ZUMWALT. Sir, the opportunity for the Soviets to do that was created by the secret agreement. Once the secret agreement was discovered with Soviet collusion, once the Soviets tipped us off about it existing, we then put enough pressure on the then Secretary of State so in the Standing Consultative Commission that loophole was closed off. But we had to pay something for it.

Mr. McCLORY. They wouldn't agree that was a violation, would they?

Admiral ZUMWALT. With regard to that—

Mr. McCLORY. The Soviets wouldn't agree that they violated the agreement at all, would they?

Admiral ZUMWALT. I don't think I contended that that specific protocol was a violation of the agreement.

Mr. McCLORY. You did say that we didn't get anything in return. Do we have any old submarines that we want to put some other missiles on?

Admiral ZUMWALT. The point, Mr. Congressman, is that the Soviet Union was given a unilateral advantage by virtue of a sloppy nego-

tiating deal and then we had to pay something additional for it to get them to close that sloppy loophole off.

Mr. McCLORY. You are very good at criticizing SALT I and the cheating that ensued. Are you against having any further negotiations as far as SALT II is concerned?

Admiral ZUMWALT. No; as I pointed out, I have been for arms control going all the way back to 1962.

Mr. McCLORY. Why negotiate with a country that violates all its agreements? They violated their treaties and agreements before SALT I came along, didn't they?

Admiral ZUMWALT. I would be delighted to introduce for the record a three-piece lecture on that which I have coauthored entitled "Dé-tente," where we suggest exactly what we ought to do.

The first thing is a "truth-in-packaging" policy. First, report accurately to the Congress and the people about Soviet cheating. You can't get anywhere in this democracy unless we keep the people and the Congress informed, and this administration has not.

[NOTE.—The text of the lectures referred to is in the committee files.]

Mr. McCLORY. Do you feel that it would have been possible for the Secretary of State to have gotten the Soviets to agree to more specific language which would have bound them more precisely and prevented them from interpreting the agreement the way they see fit?

Admiral ZUMWALT. Yes, sir; there is no doubt in my mind that we would have been able to get more precise language.

Mr. McCLORY. You think we could?

Admiral ZUMWALT. Yes, sir. There is no doubt in my mind that we would have been a long way farther down the road toward true arms control and parity had we called the Soviets' hand instead of colluding with them to cover up their cheating.

Chairman PIKE. The time of the gentleman has expired.

Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman. Admiral Zumwalt, in your prepared statement you said that the Soviets have violated the accords as presented to Congress, and then I think you said something a little stronger. Is it your view that the Soviets have in fact violated the SALT agreements, or that they have violated the agreements as presented to Congress?

We realize that they were oversold to the Congress and a lot of things were implied or stated to Congress which in fact, it turns out, was not how the agreements were written.

I am curious as to what you believe they have violated.

Admiral ZUMWALT. I believe that the Soviets have violated the basic treaty both with regard to their cheating in the antiballistic missile radar tests and with regard to their deployment of a whole new antiballistic missile radar at Kamchatka. I also believe that the Soviets have violated the agreed interpretations and I believe that the Soviets have done those things which the United States strongly stated to the Congress—the administration stated to the Congress—it would not accept in unilateral declarations; so I believe that the Soviets have to be accused of violating all three forms.

Mr. ASPIN. What would be of particular concern is whether they violated the accords. Whether they violated the unilateral statements may be unfortunate and perhaps the Congress should have been better

apprised of what the unilateral statements were—that they were nothing more than unilateral statements.

I am trying to separate out the problem of what Congress was told about SALT from what in fact SALT really does.

One of the things that worries you about the violation of the agreement itself, are things that we might, if we had a court of law, make a case in. You would say that the testing of the radars in the ABM mode is one and the Kamchatka situation is another.

Admiral ZUMWALT. And interference with national means of detection is a major third.

Mr. ASPIN. I don't know how much of this we can do in public session. Do you want to try a while?

Chairman PIKE. Let me just say it is the intention of the Chair to go around once in open session and then go into executive session.

Mr. ASPIN. Do you want to try to go into this a little more in open session?

Admiral ZUMWALT. All right.

Mr. ASPIN. Outline for me, if you can, the violations as they occurred in these areas.

Admiral ZUMWALT. First, as I said, Mr. Aspin, I think anyone who is as careful and precise as you are, about calling the hand of people in the executive branch, should take a different view from what you have just expressed about the administration's failure to inform the Congress on violations of the unilateral declaration, because that has prostituted the whole agreement.

Mr. ASPIN. I am not in any way trying to defend it. Let me make that absolutely clear. I am not defending the fact that détente and SALT have been oversold to the American public. What I am trying to get at is—going to a more legal question—wherein, exactly, lie the violations.

Admiral ZUMWALT. Now that I have found you, Mr. Aspin:

The violations are of the following types: Two, we have just discussed. Violations of the basic treaty itself. There is, in addition, in my judgment, a violation of the agreed upon interpretation with regard to the increased size of silos—

Mr. ASPIN. The agreed upon interpretation says that they cannot increase the silo dimensions by more than 10 or 15 percent.

Admiral ZUMWALT. Yes.

Mr. ASPIN. Dimensions. Now, wherein have they violated that?

Admiral ZUMWALT. I believe that accurate analysis of the intelligence data will demonstrate that there is no way to conclude that the Soviets have stuck to less than 15 percent with regard to the additional depth of their silos, and I believe they have in fact gone beyond it; and I believe that this, in part, is how they achieved the huge additional volume of their silos.

Mr. ASPIN. You are claiming that in fact they have gone beyond 15 percent in the depth of their silos?

Admiral ZUMWALT. I am saying it is possible. That is a separate matter. I also would point out in the congressional hearings on the history of the negotiations, I think it is made clear that the Soviets indicated that they would not interpret this to allow them to go to two dimensions. Furthermore, Secretary Kissinger has stated flatly in

the executive branch, but not in the Congress, that the Soviets lied to him with regard to their plans in this regard.

Mr. ASPIN. You believe they are going to more than two dimensions? Are these both new facts?

Mr. JOHNSON. It hasn't been established as a fact.

Mr. ASPIN. These are new facts that he is claiming.

What I think is widely accepted in the American community is that the Soviets have indeed gone to 10 or 15 percent in more depth, but I have never heard anybody say they have gone beyond that; and indeed it has been argued as to whether they can go the extra 10 or 15 percent in the other dimension, but it also has been argued that they haven't done that yet are arguing that they have?

Admiral ZUMWALT. Yes. I think the difference of view depends upon what dimension one puts on the original diameter. That is, the missile had a shape like this, and they have now filled in the whole diameter all the way across.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen.

Mr. TREEN. Admiral Zumwalt, let me see if I understand you correctly about one of the statements you made. I am not sure how you used the term, in what context, but did you suggest—I think you used the word “colluding”—that there was collusion on the part of Secretary Kissinger with the Soviet representative with regard to the SALT treaty?

Admiral ZUMWALT. I used the word “colluded” and meant it in the following context: that is, the Soviets are lying to us about their cheating, and Secretary Kissinger has not informed the Congress or the public about Soviet cheating.

Mr. TREEN. The period you refer to is after the treaty, is this correct?

Admiral ZUMWALT. That is correct.

Mr. TREEN. Let me ask you a couple of things about your statement. On page 6 you talk about Secretary Kissinger not having a single Defense or technical man there when the SALT agreement was concluded. Are you saying that he did not have access to this expertise?

Admiral ZUMWALT. I am saying in my judgment he did not want them there.

Mr. TREEN. Do you mean in the room when they concluded this thing, or are you saying he didn't have access to these people—that they were not present but were available?

Admiral ZUMWALT. There were technical people and Defense people available in Moscow. They were not in the room. They were not privy to the changes as they were negotiated in those final hours.

Mr. TREEN. You are entitled to your view, but I don't understand why they have to be in the room when the negotiations are going on. If the negotiator is utilizing information available to him, and has access to the information, I don't know whether mere presence in the room is necessary, if what you say is correct.

Admiral ZUMWALT. My point is exactly that, Mr. Treen—that they were not privy to the changes. Those changes were not checked with technical or Defense people. Those changes made major ambiguities

in the deal that were not checked, and the deal was signed without any opportunity on the part of the Secretary of Defense or the Joint Chiefs of Staff to reclama these ambiguities.

Mr. TREEN. If what you say now is correct, I think that is a very important point.

Let me question with respect to your statement on page 8. You talk about this agreement that the chairman asked about earlier. I am similarly dismayed, if it is true, about an agreed-upon interpretation between this country and the Soviet Union regarding the definition of a modern ballistic missile. Who signed this agreement?

Admiral ZUMWALT. It was signed, as I recall, by Mr. Kissinger in his capacity as National Security Assistant, and Mr. Dobrynin. It was not, as I recall, ever known, even to the Secretary of State, who, of course should, of all people, have been aware of it.

Mr. TREEN. It was not known to the Secretary of State. What did we lose?

Admiral ZUMWALT. Mr. Rogers was not aware of it.

Mr. TREEN. Neither the Secretary of Defense nor the Secretary of State was informed, according to your statement.

Admiral ZUMWALT. That is correct.

Mr. TREEN. For how long did that condition last? How long was it after the agreement was signed before they were informed?

Admiral ZUMWALT. Eleven months. About the 7th or 8th of June, the Soviets made the mistake of referring to it in their discussions with U. Alexis Johnson, head of our SALT delegation, who came back with a message asking in effect, "What's up?"

Mr. TREEN. After we concluded this agreement, in the interim, have we suffered a loss because of this?

Admiral ZUMWALT. No; because after it was discovered, the United States closed off the loophole.

Mr. TREEN. Before any damage was done?

Admiral ZUMWALT. No; in the sense that we had to pay something for it.

Mr. TREEN. What did we have to pay?

Admiral ZUMWALT. That is almost impossible to ascertain, as is everything else about this deal; but in the final—

Mr. TREEN. We didn't have to pay anything then?

Admiral ZUMWALT. We can prove we had to pay something, but it is impossible to say what; because in the final day, when the Soviets finally fell off the original wording of that secret agreement and agreed that this did not give them the right to install modern missiles on diesel submarines, it was part of a logrolling session in which there were four or five different issues resolved. We gave in on some, and they gave in on some. We bought that one twice.

Mr. TREEN. Did I understand your opening statement testimony to be that the Congress didn't even supply the appropriations necessary for us to undertake the research and development, weapons procurement, and so forth, that were allowed under the SALT Treaty? Did I understand you to say that?

Admiral ZUMWALT. What I said, Mr. Treen, was that it was made quite clear that if we were going to have true parity in round 2, we had better have support for the President's strategic budget and that



we have never had; that the Congress has every year cut those strategic budgets and therefore, in the words of our negotiators, deprived them of the negotiating leverage they needed to achieve parity in SALT II.

Mr. TREEN. As a matter of fact, when you testified as head of the Navy before the Armed Services Committee, you complained the Congress wasn't doing enough to keep our Navy up to a level that you thought it should be, and there had to be some tradeoff on short term needs and long term needs. Is that correct?

Admiral ZUMWALT. And I also testified to my conviction that we must fund strategic programs in order to have parity and reduce expenditures in the long haul.

Chairman PIKE. The time of the gentleman has expired.

Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

I would like to put one question on the record here about something I think you would be competent to speak to.

There has been a lot of discussion in Congress about the proposition of our publicly revealing the CIA budget figures, and our publicly revealing this Nation's total intelligence budget figures.

In your opinion, would such a revelation be wise, or would such a revelation harm our national defense effort?

Admiral ZUMWALT. In my judgment, the revelation of information like that does harm our national defense effort.

On the other hand, in my judgment, the situation we have arrived at today in this country—total loss of credibility on the part of executive leadership—has made it almost mandatory that those disclosures be made if we are going to restore confidence in our institutions. So I think we have lost and we have gained.

Mr. MILFORD. I am not sure whether you answered my question affirmatively or negatively.

Admiral ZUMWALT. We have hurt ourselves in a military sense, clearly. We have helped ourselves to remain a democracy.

Mr. MILFORD. In other words, if I hear you correctly, you say it should be revealed, even though you are at the same time saying it is going to hurt?

Admiral ZUMWALT. Yes, sir.

Mr. MILFORD. You mention the possibility that you would enter a race for the Senate. Admiral, what party's primary would you be entering?

Admiral ZUMWALT. I am a member of the Democratic Party, Mr. Congressman.

Mr. MILFORD. Normally, when a retired high-level Defense official testifies before a congressional committee, he is carefully briefed by his former branch or department on activities and events that have occurred subsequent to his retirement.

In your statement, you testified that DOD elected not to provide you with such a briefing, but suggested you appear as a private citizen. This strikes me as a bit unusual. In your opinion, why did DOD follow this particular procedure?

Admiral ZUMWALT. I think it is quite understandable, Mr. Congressman. I did not go to the Navy because I did not feel it was fair to put the Navy in that position. I went, instead, to the official who handles

the SALT business in the Department of Defense, and asked him to get a ruling from the Secretary of Defense.

I have been quite critical of this administration's failure to inform the Congress and the people of Soviet cheating and of Soviet misbehavior under détente, and it was quite obvious that the Department of Defense consulted with the White House, because the news that I was going to appear here appeared in one of their favorite columns, you know, soon afterward.

There is, I think, an all-pervasive fear in the defense establishment of Secretary Kissinger.

Mr. MILFORD. Do you have any personal ax to grind with Dr. Kissinger?

Admiral ZUMWALT. No; I do not. I consider him a man who is extremely skillful at making strategic defeat look like tactical victory.

Mr. MILFORD. One final question: Should you enter politics, would the SALT agreement, and the alleged boner committed by the administration, become an issue?

Admiral ZUMWALT. Yes, sir, in my opinion it should be one of the major issues in campaigns in 1976. It goes right back to the fundamental principle of this country: The right of the people and the Congress to know.

Mr. MILFORD. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. On page 3 of your statement, you say that there are four reasons for the low forecasts. The one that concerns me the most is a bias which stems from this administration's failure to understand Soviet strategic objectives.

What is it this administration fails to understand having to do with these objectives?

Admiral ZUMWALT. This administration has talked about détente as though both sides look at it from the same context. This administration has described détente in essence as a period of mutual accommodation between the super powers. It does not understand that the Soviet Union looks at détente as an opportunity to sow euphoria in this Nation and to gain for themselves an additional tool with which to shift, as they describe it, the correlation of forces, in order to make détente irreversible, as they describe it.

In other words, they see détente as a series of accommodations by the West to a shift in the correlation of forces, superior military-economic-technological power by the Soviet Union.

Mr. KASTEN. We talk about cheating. We talk about lack of information. Why is it, do you think, that our administration right now is hiding the cheating, is not being forthcoming with the public? What do you think motivates it?

If this in fact is the case, what do you think motivates the administration to cover up the cheating, so to speak?

Admiral ZUMWALT. I believe that is a complex question and requires complex answers.

First, I do not believe that this President has gone into sufficient depth on the subject matter we are discussing today, really, to have the same set of insights.

Second, he has not been informed of the gross nature of Soviet misbehavior, not only with regard to cheating in SALT, but with regard to cheating in the whole field of détente.

Third, I believe there is a political commitment on the part of Secretary Kissinger to the success of détente that has made him, in effect, apologize to himself and for the Russians for these deals, and reluctant to report. Indeed, reluctant even to have the intelligence people report to him.

Mr. KASTEN. Do you mean a political commitment or a personal commitment? A political commitment on behalf of the Secretary of State?

Admiral ZUMWALT. I think political and personal are the words I would like to use.

Mr. KASTEN. You keep alluding to some kind of conspiracy or some group of people who are trying to hide things from another group of people. It seems to me awfully difficult to begin with the assumption that there are key leaders in our country who are in fact trying to cover up Soviet cheating on SALT. That's essentially what you are saying; isn't it?

Admiral ZUMWALT. I do not use the word "conspiracy." I think I have made it clear that my view with regard to the President is that he hasn't gone into the deal in enough depth to understand it. It is a very complicated deal and takes a lot of study to understand, and the nature of the intelligence information concerning Soviet cheating takes hours and hours to get on top of and indeed has been debated for hours and hours within the executive branch—for hundreds of hours.

The key thing is that this same degree of concern hasn't been communicated to the cognizant congressional committees in any official way. Congress has had to pry it out in response to specific questions—one subcommittee of the Senate has done so, and now hopefully this one will.

It is a very, very serious situation.

I don't want to deal more than that with the motives; but I can tell you the practical fact is that the Congress has been deceived and misled, and the public has been deceived about Soviet behavior under détente.

Mr. KASTEN. Would you agree that the Congress has been somewhat negligent in exercising its responsibilities in this regard as well?

Admiral ZUMWALT. Yes, sir, I do think that is the case. I think that the work of this committee should have been begun in more cognizant committees—the Armed Services Committee and the foreign policy committees—much earlier.

Mr. KASTEN. On page 10 of your statement, you touched on what you refer to as a form of Soviet cheating, which I think is probably the most important: Their interference with our national means of detection, which has produced a serious reduction in our ability to check against Soviet cheating.

If that in fact is going on—if we are being seriously hampered in our ability to monitor their efforts—then really all of the agreements on paper are meaningless. If we don't have an ability—independent ability—to verify this information.

You are saying here that these efforts have produced a serious reduction in our ability to check the Soviet cheating. Could you describe that more completely?

Admiral ZUMWALT. I think the details of that kind of cheating probably ought to wait for the closed session.

Mr. KASTEN. Do you share my concern about that particular point?

Admiral ZUMWALT. I do. That is why I suggested it is in and of itself the most positive indicator among a whole series of indicators, and it is what makes it extremely difficult for me to understand why this administration has been unwilling to call the Soviet hand and to report it to the Congress.

You would think that there is nothing so frightening about going to the Congress and saying, "Look, we have been had. We bought the Brooklyn Bridge."

I recognize that causes some political problems, but surely if it's good for our country it ought to be done. It hasn't been done.

Now, through the courtesy of a friend I saw an analysis NSC did of the Bagley-Zumwalt articles and there were a whole series of straw men put up and shot down, rather than dealing with the fundamental problems with which this article deals—namely that we have gross Soviet misbehavior in SALT that has not been reported to the people, has not been reported to the Congress, and is being apologized for rather than reported.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman.

Mr. LEHMAN. We think of the statement in Hamlet: "A custom more honored in breach than observance." That seems to be applicable to the SALT agreements.

Admiral ZUMWALT. Yes, sir.

Mr. LEHMAN. You say unequivocally that the Russians have cheated. Have we?

Admiral ZUMWALT. To the best of my knowledge and belief we have not. I don't think under our system it is possible. With the newspapers looking over our shoulders, and with the Congress looking over the shoulder of the executive branch, I think it is impossible for this country even to consider cheating.

Mr. LEHMAN. Put yourself on this position: There is one thing we have learned on this committee—that sometimes this country does not always behave angelically; but this is a real world, and sometimes we have to make compromises to survive. Is there anything that this country has done in regard to the SALT agreement that, if you were in the Russian bureaucracy, you would think would be cheating?

Admiral ZUMWALT. No, sir. If I were a member of the Russian bureaucracy, and had done my homework, I believe I would know that there was no way for the United States to do research and development or force level work without having it funded by the Congress, and that, therefore, there is no way that the executive branch could get away with it. And I believe if I had done my homework I would believe there is a zero probability of collusion between the Congress and the executive branch.

Mr. ASPIN. Would the gentleman yield? It is not research and development that is covered by the SALT accords. Research and development is practically not controlled at all.

If you were a Soviet, in the Kremlin, looking at what the United States is doing, wouldn't you be suspicious of those 40 to 60 covers that we have on our Minuteman missiles?

Admiral ZUMWALT. It is my understanding that the Soviets raised that with us, and we immediately removed the covers that were there for the purpose of helping cement to dry. Whereas, whenever we have raised a question with the Soviets, the majority of times they have lied to us in response, until we have given them some kind of photographic or other evidence and then they have given us an ambiguous answer, which has been accepted.

I believe if I were a Soviet I would be shaking my head in wonder that the Americans are letting us get away with what they are letting us get away with.

Mr. ASPIN. But we have not removed those covers from the Minuteman and in fact they still go up when we need cement to dry. It is all right for us to say that is the reason, but how do the Soviets know?

The point is, there is some ground—if you were in the Soviet Union with your frame of mind, there is no question you would find things we were doing which you would consider violations. Whether they are or not is something else.

Admiral ZUMWALT. If I were in the Soviet Union I would know I would have so much more information, more relevant than anything that could go on with 2 or 3 days coverage of a silo, by just sitting in on open hearings like this and reading what the newspapers say about it—

Mr. ASPIN. We are not talking about information. Even with the information available.

Admiral ZUMWALT. There is clear-cut asymmetry of the means of intelligence collection—Soviet interference with our national means of detection cuts off the one umbilical we had to check on them.

Mr. ASPIN. One of the ways in which they might interfere with means of verification is covers. That point they might raise about us, but we, of course, could raise that about them. They do the same thing.

Other things are the telemetry, encoding of telemetry on the missiles.

There was another thing mentioned in several articles that I have seen that they have somehow interfered with our surveillance radars.

When you say there is increasing interference with U.S. intelligence collection, which one of those is it?

Admiral ZUMWALT. I refer to all those and others.

Mr. LEHMAN. I would like to address one other question to the witness: A group of Congressmen was being briefed by one of the high-ranking people of the State Department who made the statement that détente does not apply to the Mideast. Does the SALT agreement apply to the Mideast as part of détente?

Admiral ZUMWALT. Détente does not apply to the Mideast. It didn't apply to Southeast Asia where the Soviets helped Hanoi violate the truce after supporting the truce—helped them with equipment and strategic guidance. It did not apply in the case of the Soviet commitment under the summit agreement to provide crop forecast information. They failed to do so, while they have furtively purchased our grain, and it did not apply in the Middle East where they failed to warn us of the impending crisis—as they removed their advisers, deployed their troops, and went on alert 3 weeks before we did.

Mr. LEHMAN. There are many questions about the SALT agreement and the SALT violations. My concerns are the other nuclear dangers and future nuclear threats. At least, now, with SALT we know who the enemy is.

But isn't there an over-emphasis on the present enemy—the immediate threat—rather than the more difficult and perhaps more serious problem of future nuclear proliferation?

Some day, somebody will blow us up and we won't know who it was.

Admiral ZUMWALT. You have to look at SALT as having accomplished the following: It achieves for the Soviets a cover which permitted them to go ahead and do almost exactly what they planned to do, by using ambiguities and cheating; and it created euphoria in the United States, which reduced the U.S. spending for strategic budgets; and, therefore, together these effects collectively added to the Soviet advantage in strategic weaponry.

Chairman PIKE. The time of the gentleman has expired. Mr. Johnson?

Mr. JOHNSON. I think the record should reflect that the committee has access to information which has been classified and which contradicts most of the testimony given by Admiral Zumwalt. I would like to direct my questions, then, with respect to specific articles of the SALT agreement.

First of all, I would like to ask the Admiral: When did you leave the Navy?

Admiral ZUMWALT. On the 1st of July 1974. And, Mr. Johnson, I do not believe that the committee has done its homework if it concludes the information which it has been given contradicts what I have said.

Mr. JOHNSON. Admiral, I don't have any way of verifying what our secret documents say or whether they are accurate. Neither do I have any way of verifying that what you say is accurate. It does seem to me that your generalized statements are more critical and political in nature than they are specific, and I would like to get to some of these specific violations in a moment.

While you were Chief of Naval Operations, did you make any of these allegations publicly?

Admiral ZUMWALT. While I was Chief of Naval Operations I testified to my great concern about military developments before four congressional committees each year and at the time——

Mr. JOHNSON. So you were providing information to the Congress in contradiction to what you earlier said?

Admiral ZUMWALT. I am talking about my concern about the trend.

Mr. JOHNSON. I am talking about the specific allegations of Soviet cheating which has been covered up.

While Chief of Naval Operations, did you make any of these allegations publicly?

Admiral ZUMWALT. I will have to check it for the record. My recollection is that I did not. In June of 1974, which was my last month in office before Mr. Nixon went to Moscow, when we were still concentrating all of our energies on trying to head off an even worse SALT agreement——

Mr. JOHNSON. Admiral, my time is limited. I only have 5 minutes.

Admiral ZUMWALT [continuing]. I wrote about a 12-page letter to the President expressing all these concerns. It had reached the point

where we were just about ready, as the executive branch, to face up to the question of Soviet cheating, but we were still dealing with it within the executive branch.

Mr. JOHNSON. You did not make these allegations publicly—other than this testimony before congressional committees—while you were CNO?

Admiral ZUMWALT. That is correct.

Mr. JOHNSON. Article 1 of the SALT agreement says, "The parties undertake not to start construction of additional fixed land-based intercontinental ballistic missile (ICBM) launchers after July 1, 1972."

Have you any information that the Russians are violating that agreement?

Admiral ZUMWALT. That one gives the specific number.

Mr. JOHNSON. " \* \* \* undertake not to start construction of additional fixed land-based \* \* \* launchers."

Admiral ZUMWALT. It is my belief the Russians have violated that and lied to us about the way in which they have violated it.

Mr. JOHNSON. You didn't say so publicly while CNO but you are saying so now. What information have you received since you left office that you can't share publicly? Because, as I understand it, when you leave office you lose your classification—you are not entitled to receive any secret information—is that correct?

Admiral ZUMWALT. I think I can say what I have heard. What I have heard is that the holes that were being built, that looked as though they should add up to more than the authorized total, did get completed; that the Russians have told us that they are command and control silos; that our intelligence community believes, with very minor modifications, they can in fact be converted to true silos; and that there is a distinct probability the Soviets might do that as part of a massive breakout—including the employment of mobile missiles and including the employment of ABM radar and so forth.

Mr. JOHNSON. This says six missile launchers. Mobile launchers are not a part of the treaty, and both sides have agreed they are not part of the treaty.

Admiral ZUMWALT. My answer was specifically with regard to fixed launchers.

Mr. JOHNSON. I don't know where you are getting your information, Admiral.

Admiral ZUMWALT. I explained to you in my statement that in my capacity as a sometimes newsman, I have access to a great deal of information, something that used to worry me a lot more than it does today.

Mr. JOHNSON. It is true that you are not legally entitled to have access to secret classified documents of the U.S. Government now that you are no longer an active member of the naval branch; isn't that correct? Didn't they remove your security?

Admiral ZUMWALT. I have a classification. I have not used that classification to obtain any information. I have stayed completely out of the strategic field with regard to that classification.

Mr. JOHNSON. So you do not have access to CIA documents or Defense Department documents?

Admiral ZUMWALT. That is right in the strategic field.

Mr. JOHNSON. Are you familiar with article II which reads: "The parties undertake not to convert land-based launchers for light ICBM's, or for ICBM's of older types deployed prior to 1964, into landbased launchers for heavy ICBM's of types deployed after that time"?

Any evidence of violation of article II?

Admiral ZUMWALT. Yes, sir, violated as it was interpreted in the background discussions. There was an agreed interpretation that said both sides agreed not to deploy a missile significantly larger than the largest light missiles. The Soviets have violated that and have deployed one that is 50-percent larger and has three to four times the megatonnage and throw weight.

[NOTE.—Admiral Zumwalt subsequently amended the third sentence above to read: "There was an agreed interpretation that said both sides agreed that dimensions of land-based ICBM silos will not be significantly increased and a U.S. unilateral statement warning the U.S.S.R. not to deploy a missile significantly larger than the largest light missiles."]

Mr. JOHNSON. Under the same agreement, though, we have increased the capability of the Minuteman 2½ times, haven't we?

Admiral ZUMWALT. Yes; but our largest light missile was the Titan missile, and, therefore, we are completely legal and the Soviets are illegal and gained a monstrous throw weight and megatonnage advantage.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Admiral, Dr. Kissinger, who negotiated SALT I, wore the hat of Secretary of State and was also the head of the National Security Council. Wasn't he also Chairman of the Verification Panel?

Admiral ZUMWALT. Yes, he was.

Incidentally, it is my understanding that he has retained that, even though he inherited it as Special Assistant for National Security.

Mr. STANTON. Isn't that sort of a conflict of interest? The verification panel would have to call the shot on the violation that occurred, and therefore he would be knocking down his own agreement?

Admiral ZUMWALT. It is exactly the point; yes, sir. It's like the Yankees playing the Dodgers with a Yankee umpire.

Mr. STANTON. Or the fox guarding the chickens.

Isn't there a case involving the SA-5 radar issue, which is a good example of how this conflict of interest operates to play down Soviet cheating?

Admiral ZUMWALT. Yes, sir. I might describe that a bit. The SA-5 radar began to be tested in ABM mode, according to intelligence briefings we were given for the latter part of my 4-year term; and it is my understanding that since then there have been a major series of tests so conducted, that the evidence concerning these violations has been progressively reinterpreted to make it appear less and less like a violation, while the Soviets have completed over 1 year's time a major series of tests that in my judgment would have clearly given them a capability some day to deploy the SA-5 radar in ABM mode. And they have further added to their ABM system by installation of a long-range ABM radar in Kamchatka, again clearly in violation of the treaty.



Mr. STANTON. Can you tell us what happened at the December meeting of Dr. Kissinger's Verification Panel? That is to say, in regard to violations that had occurred under the SALT agreement.

Admiral ZUMWALT. You are referring to December 1974?

Mr. STANTON. That is correct.

Admiral ZUMWALT. It's my understanding at that meeting he refused to get the Soviet answers by asking them about the data that we had.

Mr. STANTON. And we decided not to raise the issue at the SCC meeting in Geneva is that correct?

Admiral ZUMWALT. That is my understanding.

Mr. STANTON. Even though the Defense Department wanted us to raise the issue?

Admiral ZUMWALT. Yes, sir, and even though the Deputy Secretary of Defense sent a letter urging that every effort be made to find out what was going on.

Mr. STANTON. This highlights the obvious conflict of interest Dr. Kissinger had in heading the verification panel and being head of the National Security Council while he had negotiated the agreements.

Admiral ZUMWALT. Yes, sir, and the process occurs in a series of ways. Sometimes it is just by refusal to ask a question of the Russians. Sometimes it is asking the question but not reporting the answer to the rest of the executive branch. And sometimes it is just long delay in asking questions.

Mr. STANTON. Was the issue finally raised in April of this year, and are you aware that Dr. Kissinger's Verification Panel officially stated that the issue was settled?

Admiral ZUMWALT. I have been informed that that happened, and that subsequently there were tests that continued in the ABM radar mode in the Soviet Union.

Mr. STANTON. And isn't it a fact that those tests with regard to the SA-5 were continued all summer and that as of September 10, 1975, in an intelligence report, they had placed new SA-5 radars on the eastern peninsula—which is an additional violation of the SALT agreement?

Admiral ZUMWALT. That is my understanding. And further, that they have deployed their second huge long-range ABM radar in Kamchatka. If they get one more they will have coverage all around the horizon, as I understand it.

Mr. STANTON. Do you see any relief for the Congress or the American people in Dr. Kissinger's right-hand man being head of the National Security Council?

Admiral ZUMWALT. No, sir. I believe the fact that Dr. Kissinger continues to preside over the Verification Panel meetings demonstrates there hasn't really been a shift in power.

Mr. STANTON. And that Dr. Kissinger does continue to preside over the Verification Panel even though he is no longer head of the National Security Council?

Admiral ZUMWALT. That is my understanding.

Mr. STANTON. Thank you very much.

Chairman PIKE. We have gone around once. It is my feeling from the questions that the members might well prefer to go around a second time and wait to go into executive session this afternoon.

Admiral Zumwalt, I obviously have some difficulty with parts of your testimony.

I first want to go back to something that Mr. Johnson said and ask him this: When you refer to those secret documents in our possession—which contradicts Admiral Zumwalt's testimony—are you not referring to the NSC critique of the articles which Admiral Zumwalt has written?

Mr. JOHNSON. Yes, which evidently he had access to.

Admiral ZUMWALT. I have seen that document and I consider it fatuous pettifoggery.

Mr. JOHNSON. We ought to know who wrote it, then, so they have an opportunity to rebut.

Chairman PIKE. I am not at all sure that it doesn't tend to prove your point rather than to condemn your point—if the NSC is devoting its efforts to discrediting what you say about SALT violations. Very frankly, I don't know the answer, and I don't think Mr. Johnson does; and I don't think there is the expertise on this committee to know the answer as to what the facts are. But I am glad that we have established what it is that seems to contradict your testimony, and your characterization of what seems to contradict your testimony.

I want to get back to something you said parenthetically in response to a question by Mr. Kasten. We may have strayed some distance from intelligence here, but you did say there appears to be a reluctance on the part of the administration to receive from the Department of Defense evidence of Soviet violation. Can you be more specific on that?

Admiral ZUMWALT. Yes, sir.

I have to start out by an analogy. During the last several months before the summit meeting in 1974, I was told by the Secretary of Defense that he was under orders not to forward to the White House JCS positions on the SALT agreement—on the prospective summit SALT agreements. They stacked up some 10 or 12 or 13 of them until, as I recall, in June, Senator Jackson held hearings to inquire as to what was going on; and during the course of that meeting put everybody under oath and the facts came out that these documents were stacked up and they suddenly went to the White House.

Knowing that, and observing what was happening with regard to the violations and the questions being asked about violations, I felt I could see a very clear parallel in the operation of the Verification Panel on questions of cheating.

The U.S. head of U.S. members of the Standing Consultative Commission appeared to be under orders to report only to Henry Kissinger—not to the Secretary of State's side but to the NSC side—and not to the Department of Defense; and on questions which ostensibly were being asked and must have gotten answers, the answer didn't come back to even the Joint Chiefs of Staff.

Chairman PIKE. Admiral Zumwalt, again, what troubles me is something that we have seen before: Of course, in the past we talked about incidents which weren't current. Now we are in a very treacherous area in discussing situations existing today; and the question becomes: To what extent political judgments warrant intelligence reporting?

Would you give me your analysis of that concern of our committee, as far as SALT overall is concerned?

Admiral ZUMWALT. I have to start out by saying what I say here is purely judgmental, because I cannot prove this impression. But my impression is that the intelligence community felt under great pressure not to report facts accurately but rather to tweak them in favor of policy.

Chairman PIKE. Admiral Zumwalt, your presence here has been alluded to, and perhaps to some degree criticized, on the assumption that you are a candidate for public office. I would only state that it is a burden which we all share. I do not think that it ill becomes a witness any more than it ill becomes a questioner; and I do not know of any way we can avoid it—either as to questioners or on your part.

Admiral ZUMWALT. Thank you, Mr. Chairman. You will recall I said I would prefer not to testify.

Chairman PIKE. I do recall, and I thank you for being here.

Would you state the nature of the error, which you referred to earlier, in the CIA's costing of Soviet defense expenditures overall?

Admiral ZUMWALT. Yes, sir. I am not competent to explain the technical problem involved, but it became clear to me early in my 4-year tour that there had to be something of a major nature wrong with CIA's cost model, because the things we saw the Soviet Navy producing just couldn't have been built in a system as inefficient as theirs for the costs which were being generated. The costs in that model were being calculated by calculating what it would cost for us to produce the same hardware.

It came out to dollars so much lower than we were spending that it just had to be wrong. We put our people to work, working with CIA, and over a period of about 3 years CIA remained steadfast in its conviction that they had the right dope. And then suddenly, about the time I retired, they admitted that they had found what they considered to be a sizable error. And it is my understanding that that adjustment is what went into the costing that Secretary Schlesinger spoke of in his speech in New York when he pointed out that the Soviets have outspent us in the strategic field by 60 percent and by 20-25 percent in the conventional field since 1971.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Thank you.

I would just like to supplement your statement and the Admiral's, I think it was, that intelligence information was being warped by political decisions which were made. And I would like to observe further that political interests may affect the testimony given to this committee and some of the questions and answers which we are receiving here; and I think we have to be wary of that danger, too.

Also, I would like to observe that I think there is real danger to our entire international relations structure through testimony or statements which indicate some kind of conspiracy or collusion in which the Secretary of State is involved and in which it is alleged that he has deliberately ignored intelligence—which I deny.

I just want to make it clear that I think we have to weigh the testimony here and then reach some highly objective decision.

Admiral ZUMWALT. To help the committee in that regard I would be proud to take an oath and repeat the testimony, sir.

Mr. McCLORY. I am not questioning your opinion, and I am not questioning your belief in what you are stating. On the other hand,

I watched former Secretary Schlesinger on "Meet the Press" last week, and he said in effect, "There are sufficient ambiguities in the agreement that one cannot demonstrate conclusively that any particular actions on their part"—on the Soviet's part—"is a violation."

You disagree with that?

Admiral ZUMWALT. Categorically.

Mr. McCLORY. Do you have any information that any single violation has not been discussed or considered by the administration?

Admiral ZUMWALT. No, sir; nor do I think anyone else in the executive branch, other than Secretary Kissinger, can answer that. In other words, I think it has been policy not to provide the Soviet answers to most officials who should get the information.

Mr. McCLORY. You stated that more than 100 hours had been devoted to discussion of the alleged cheating on the part of the Soviets. I do not want to deny that they have cheated. Secretary Laird has asserted they are cheating and so have other people; so I do not think there is any question in anybody's mind about that. But I think there is no question in anybody's mind, either—or I don't think anyone could charge—that the Secretary of State or the President or anyone else is being deceived by the Soviets. I think they are fully aware of what the Soviets' tactics and actions and policies are.

Admiral ZUMWALT. It is just the Congress and the people who are being fooled.

Mr. McCLORY. Do you think that because this is discussed for more than 100 hours by the administration, they should go on television and discuss it for 100 hours with the American public or spend 100 hours of congressional time on that subject? Isn't it their job to discuss this at the executive level?

Admiral ZUMWALT. It is, but it is also their job to test the Soviets by asking questions. Many times they haven't done that. It is also their job to report clear-cut violations of the deal as explained to Congress, to the Congress. I simply cannot understand why the Congress would not want to know of a major departure from the strategic relationships—that the administration supported—by virtue of the clear-cut violation of unilateral declaration.

Mr. McCLORY. I do not know that the Congress does not want to know about it. That is part of the purpose of this committee and this entire investigation that we are conducting, and it is the reason we are seeking your testimony and other information about the SALT agreement and the alleged violations.

Let me say this: It is true, is it not, that when the SALT agreement was approved in the Senate the Joint Chiefs of Staff supported that agreement?

Admiral ZUMWALT. With a series of very careful caveats, which included that we counted on the national means of detecting. It stated it was contingent upon the Congress' provision of adequate funding to get a better deal in round No. 2, and so forth. None of those things have come to pass.

Mr. McCLORY. And we wanted the thing loosely enough drawn so that we could develop and deploy the Trident submarine too; didn't we?

Admiral ZUMWALT. We wanted it precisely enough that we could deploy the Trident submarine.

Mr. McCLORY. We wanted a precise enough loophole or precise enough language so we could continue to develop what we wanted to develop?

Admiral ZUMWALT. I think it is a very important point not to be confused about, Mr. McClory. We wanted a clear-cut legal way of doing the things that were necessary for the country. The Soviets wanted a clearly ambiguous way of violating the deal so they could carry out the programs they intended to carry out in violation of the spirit of SALT.

Mr. McCLORY. I understand your criticism of the agreement and that you would have negotiated it differently; but we have before us an agreement which has been negotiated, and many people think it was skillfully negotiated—notwithstanding the fact there are the traditional violations which you expect from any agreement with the Soviets.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you, Mr. Chairman.

Admiral Zumwalt, it has been said you are running for office. Let me go on record saying I hope you do run for office and I hope you get elected. I think you and I have had our differences in the past, but I think having you around would genuinely raise the level of debate. Perhaps I should help you sometime. I will go down to Norfolk and endorse your opponent.

Let me say, to get to the subject of the SALT violations, I think it is terribly important that we make what we are trying to do here—what you are trying to say—very, very specific, and not allow the thing to be clouded with fuzzy thinking or charges of violations where there is not in fact a case of violation.

That is the only thing. I think it is terribly important that we be very, very specific about where we think the violations have occurred, as well as other things that have gone on, which are contrary to what we think should go on, but are not really violations.

For example, take what you were saying to Congressman Johnson. The 150 holes in the ground that the Soviets are using, or say they are using, for command and control. That is not yet a violation of article 1. Article 1 says that you can only have so many missiles, but they have not put missiles into those holes in the ground and you have got to have a crime before you can charge them with the crime. So just because they have a hole in the ground, which might be quickly converted to a silo for missiles, doesn't mean they have violated the accords. That is terribly important.

Also, the second point that Mr. Johnson raised about the light-to-heavy, which you also say they have violated—the conversion of light missiles. But they have not agreed to a definition of what a heavy missile is. They have specifically said they would not. So, in their view they have not violated the second article. I think it is terribly important that we be very careful when we say they have violated article 1—that we be very clear about what we mean. That is the only thing that I want to say.

I think it is important that the issue be debated but this is a very, very serious issue and we have a Presidential campaign coming up. It is just terribly important that unless we are out to wreck the whole system—and I don't believe you are out to wreck the whole negotiating process—we not let the discussion get fuzzy or ragged at the edges,

but that we be very careful and precise about what we mean and conduct this in a rational manner.

I would like to go beyond those kinds of things and give you a chance to talk a little bit about what your views are in light of our experience on SALT and so forth. As to what your views are on the future of SALT and détente and that kind of thing, you might say a little bit about that.

Admiral ZUMWALT. The first point I would like to make is that I share your concern that we be clear and precise in our thinking. That is why I insisted the article I coauthored be attached to the testimony—because I stand on that as accurately stated. In the testimony today we have discussed three forms of clear and precise cheating on the basic deal, in my judgment: The interference with national means of detection, the ABM radar tests, and the installation of a whole new radar for long-range detection in Kamchatka.

Mr. ASPIN. We have some difficulty in talking about that in open session.

Admiral ZUMWALT. No. With regard to the other points, I call those violations of the deal as explained to Congress.

Mr. ASPIN. That is where I want to be sure. I think we have to be very careful about this. I think we can both agree that the SALT accords were not adequately presented to Congress, that they were grossly oversold.

You look at the testimony that Mr. Mel Laird and Secretary Kissinger gave. Maybe Mel Laird was misled; but whatever the reason was, what they said clearly was not the case.

Admiral ZUMWALT. To go on with the thrust of your question, I believe that we are being presented publicly with an artificial choice. We are being told the alternatives are nuclear war or détente. I believe that those are false choices. The Soviets don't want nuclear war, although they would kill a lot more Americans than Russians. They just want a series of accommodations.

I believe the choice is to make détente work or to sit passively and accept Soviet cheating and apologize for it, à la Munich, and I believe that we can make détente work. There is no reason in the world why we should be providing the Soviet Union our grain while they are violating détente and SALT en masse. There is no reason in the world why we should be providing lovely military technology to them to overcome their inefficiency while they are outspending us in the military field.

There is no reason in the world why our trade shouldn't be linked into this. All of these things should be put together as negotiating wampam, and we should demand the Soviets perform in accordance with commitments, stop outspending us in the military field, and be prepared to match them if they don't. All of that has to begin with the administration reporting accurately to the people and the Congress.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen.

Mr. TREEN. Admiral, please refer to page 9 of your statement. About one-third down from the top of the page you state, "It is my recollection that in March 1974, Kissinger received a recommendation that the problem of Soviet cheating be faced up to and that he subsequently received a memo signed by Deputy Defense Secretary Clements \* \* \*."

Are these two different recommendations you are talking about in your statement?

Admiral ZUMWALT. Yes, sir.

Mr. TREEN. From whom was that recommendation in March 1974?

Admiral ZUMWALT. My recollection of that is that numbers of us in the Defense Department and State Department tried very hard to get an official recommendation up through channels and that when that was not done two people who were in State signed the memorandum and a copy was shown, as I recall, to Secretary Kissinger, urging that the Soviets be put heavily to the test on all these reports of cheating.

Mr. TREEN. Who were the two who signed that recommendation?

Admiral ZUMWALT. The only name I can remember for sure is Mr. Seymour Weiss, who was at that time, as I recall——

Mr. TREEN. In the State Department?

Admiral ZUMWALT. He was in the State Department.

Mr. TREEN. Your statement says that Kissinger received the recommendation. Do you know whether he received it or not?

Admiral ZUMWALT. I was informed that he had received it; yes, sir.

Mr. TREEN. By whom, do you recall?

Admiral ZUMWALT. No, I can't be positive. It was probably my liaison officer who was in touch with a whole series of people, including Mr. Weiss.

Mr. TREEN. You mentioned a letter, I think 12 pages in length, that you wrote to the President. When was that letter written?

Admiral ZUMWALT. In June 1974.

Mr. TREEN. That was to President Nixon?

Admiral ZUMWALT. Yes, sir, expressing great concern about the specific deal that was then being talked about to be signed in the latter part of June and early July, and protesting the way in which the positions had been achieved. That is overrunning, end running the bureaucracy.

Mr. TREEN. Do you know if the President received that letter?

Admiral ZUMWALT. Yes, sir, I do, because he commented on it in a subsequent NSC meeting.

Mr. TREEN. Do you have a copy of that letter?

Admiral ZUMWALT. I do not.

Mr. TREEN. I don't mean here.

Admiral ZUMWALT. Yes, sir, I could get one in my archives.

Mr. TREEN. Are you willing to make this available to this committee?

Admiral ZUMWALT. Yes, sir.

Chairman PIKE. Without objection, it will be placed in the record at this point.

Mr. TREEN. In the record at this point? This is an open session.

Admiral ZUMWALT. At this point the information is all clearly unclassified. It was classified at the time because it dealt with the future.

[The memorandum follows:]

MEMORANDUM FOR THE PRESIDENT OF THE UNITED STATES

Via: The Secretary of Defense.

Subject: Strategic Arms Limitations.

I believe, as I know you do, that there is no subject of greater importance than SALT to the country's long term security—both in terms of preserving

the peace, and in terms of the impact which its outcome will have on the perceptions of others, and on the outlook and international behavior of the United States and the U.S.S.R. For these reasons, there is no subject which is more worthy of our closest and most careful attention.

I believe that fact, combined with the circumstance of my impending departure from the office of Chief of Naval Operations and your forthcoming summit meeting, imposes on me a special obligation—pursuant to my statutory responsibilities as your naval adviser—to provide you with my military judgment on the current state of the strategic arms limitation talks.

I have found similar exchange of views with the JCS and the Secretary of Defense to have resulted in useful insights in the past, and would have preferred that more time were available for such exchange on this occasion. However, I have been advised that I will be called to testify before the Arms Control Subcommittee of the Senate Armed Forces Committee next Wednesday, June 19, on the matters, and judge it important therefore to place these views before you at this time.

I have been following the course of SALT II with a special sense of responsibility, since I was a member of the Joint Chiefs of Staff which approved the SALT I agreements, on the basis of certain assumptions and assurances relating both to U.S. programs and to the planned course of follow-on offensive arms negotiations.

You recall that the considerations which influenced the JCS on that occasion included the fact that the Interim Agreement placed a limit on the potential scope of ongoing Soviet deployments, and that it was of limited duration, to be superseded within 5 years by a permanent agreement providing superiority in MIRV technology was deemed sufficient temporarily to offset Soviet superiority in the number and throw weight of Soviet missile systems during the anticipated limited duration of the interim agreement.

At the same time, it was recognized that the Soviets would make a maximum effort in all areas not limited by the agreement—a fact which Secretary Brezhnev emphasized to you.

It was equally recognized that a steady shift in the strategic balance to Soviet advantage would be inevitable under these circumstances unless the United States resumed improvement of its own strategic capabilities, while simultaneously pursuing the goal of a permanent agreement that provided for true strategic equivalence. I think it is important to keep in mind that these two objectives were interrelated, in the sense that without improvement of U.S. capabilities the Soviets would have little incentive to come to an equitable permanent agreement.

In summary, through the SALT I agreements we knowingly set in motion events which, over time, had the potential to shift the strategic balance to our disadvantage. The underlying assumptions which made this situation tolerable were that it represented a temporary phenomenon; and that we would move steadily during the next 5 years to a situation of agreed equivalence in strategic capabilities.

We are almost halfway through that period now, with relatively little progress toward the basic goal. In the meantime, the strategic balance, as foreseen, has continued to shift to our disadvantage.

Since signing the interim agreement, the Soviets have proceeded rapidly to develop and test new systems, including four new MIRVed ICBMs which represent not only advances in technology but are significantly heavier than those they will replace: the new Delta class submarine (8 already afloat, 28 estimated by 1977) with its associated missile, the range of which is roughly equivalent to our planned Trident missile (which will not be operational until 1978 even if the TTB permits testing to be completed); and the Backfire bomber.

In this situation, time is clearly on the Soviets' side. Each day shifts the balance further to their advantage. Since the Soviets see important political gains to be reaped from strategic superiority, they can be expected to be reluctant to yield this advantage. This has been borne out by the results of SALT II to date. The Soviets have shown almost total intransigence, and have yielded on few points in controversy. While the Soviet position has remained essentially constant, our own has moved steadily toward theirs as we have accommodated our stance in the hope of gaining an agreement.

The reasonable conclusion to be drawn from the Soviets' behavior thus far is that they are not now disposed to negotiate a comprehensive permanent agreement on terms compatible with the national security of the United States.



As a result of that Soviet behavior, recent U.S. negotiating effort has been directed toward exploring the possibility of a more limited agreement which would place some limits on the MIRV deployments of both sides, coupled with an extension of the interim agreement.

I believe strongly that such agreement would be contrary to U.S. interests, for several reasons:

It would perpetuate and give an appearance of treaty-like permanence to the numerical imbalances of the interim agreement. By so doing, it would lend weight to the Soviets' argument that they are entitled to the quantitative advantages of the interim agreement in perpetuity and could defeat our arms control objective of achieving essential equivalence by encouraging already evident Soviet effort to gain a significant margin of strategic superiority.

It would represent a deviation from the principle which made the interim agreement acceptable from the standpoint of U.S. security interests; that is, that the parties would proceed directly therefrom to negotiate a permanent agreement providing for essential equivalence within a 5 year period.

It would pose very serious verification risks.

And, finally, in both my judgment and that of my colleagues in the Joint Chiefs of Staff, there is no significant strategic or military rationale for such agreement.

All the analyses I have seen confirm my judgment that none of the separate MIRV agreements currently under consideration in the interagency arena is consistent with the preservation of U.S. security.

Under these circumstances, I see only two general alternatives for assuring essential equivalence. One is for the Soviets to accept in good faith the premise of the interim agreement—reemphasized in the 1973 "Basic Principles" for further SALT negotiations—that both sides objective is prompt negotiation of a permanent treaty which avoids unilateral advantage. The other is for the United States to undertake now to attain in the long term and maintain a posture of strategic equivalence without extending the interim agreement or adding to the unequal restraints now imposed by it.

My experience as a close observer of SALT II has led me to the conclusion that a satisfactory permanent agreement is unlikely to result unless the United States brings to bear all the negotiating leverage it can muster. Specifically, this requires taking SALT out of the narrow context of arms control negotiations and putting it in the broader framework of the entire détente relationship between the United States and U.S.S.R. This would require that the United States make clear to the Soviets that détente cannot survive without a stable military equilibrium, and that essentially equivalent strategic forces are the foundation of such equilibrium. Implicit in this is the proposition that prompt Soviet movement toward an equitable permanent agreement is necessary to establish the good faith of their long-term intentions.

At the same time, we should make clear to the Soviets that their failure to demonstrate good faith will inevitably jeopardize those tangible benefits which they are seeking from the détente relationship (for example, trade, advanced industrial technology); and place on them the added economic burden of increased strategic arms competition with the United States.

In support of this broadened approach, I believe we should make absolutely clear to the Soviets that anything less than true equivalence is politically unacceptable in the United States. The U.S. public will not willingly accept a position of inferiority, with all the military risk and loss of international influence which that entails. The Soviets should be made to understand that their failure to agree to strategic equivalence will drive the United States in the direction of expanded strategic programs, which will inevitably destroy the atmosphere and domestic political support essential for a policy of détente.

In my judgment, failure of the United States to convey this fundamental fact to the Soviets runs the risk of producing both an unsatisfactory SALT outcome and the ultimate destruction of détente.

In approaching the Soviets, the United States should not be modest about what it is offering them. In the face of unquestioned U.S. economic and technological superiority, an offer of agreed, permanent strategic equality is no insignificant thing. We can legitimately represent this as a substantial concession in itself; as clear evidence of U.S. good faith concerning détente; and as something that requires a Soviet response in kind if détente is to remain viable.

For this to succeed, however, it is absolutely essential that we be totally forthright with the American public about the true state of affairs and what is required to attain an equitable agreement. If the public is accurately informed, I am confident it will appropriately respond. The signal we must convincingly convey to the Soviets is that the U.S. people will unhesitatingly support whatever programs are necessary to insure that the Soviets do not gain permanent superiority in strategic capabilities.

At the same time, in all our behavior toward the Soviets we should consistently reflect the fact that attainment of an agreement providing for essential equivalence by 1977 remains our primary objective. We must make totally clear to the Soviets that we will not be deflected from that objective by excursions which essentially perpetuate the imbalances of the interim agreement (or worse, extend their life); or which ratify Soviet gains in the area of our former technological advantage. Such excursions, especially when combined with an extension of the interim agreement, seriously jeopardize our prospects of ever attaining an equitable comprehensive agreement and, by actually encouraging Soviet efforts to gain permanent strategic superiority, pose grave risk to our national security.

Finally, we must clearly communicate to the Soviets our belief that their own interests are best served by prompt movement toward a permanent agreement which will remove strategic weaponry from the list of tension-producing issues between the two countries, and create the strategic balance which is essential for a true détente.

In conclusion, I would like to touch on two related matters in the arms control area.

The first is the U.S. position on the Threshold Test Ban Treaty reflected in NSDM 256. Though advice of the Joint Chiefs of Staff was not sought on the impact which that NSDM would have on our security, they have subsequently forwarded to you their collective views on the subject. I would like simply to add emphasis to those views by stating my own judgment that there is no supportable strategic or military rationale for the proposed treaty; and that the current U.S. position, as reflected in the NSDM, runs the risk both of undercutting U.S. leverage in the SALT negotiations, and of imperiling U.S. security by precluding or seriously inhibiting the development of weapons systems essential for force modernization and the support of national nuclear weapons strategy. The impact on the Trident II weapons system will be particularly severe; and, given the increasing vulnerability of land-based systems, restricting our ability to deploy modernized systems at sea could have especially serious consequences in the future.

We know that the Soviets have already completed most of the warhead test program for their next generation of strategic missiles. The United States, on the other hand, still has a number of tests scheduled for accomplishment over the next several years in support of its own strategic force modernization program. Most of these key test programs would be precluded or severely curtailed by the NSDM standards. In this connection, I think it is worthy of note that the TTB proposal was reportedly a Soviet initiative, for it is clear how the combination of the interim agreement's numerical asymmetries, the vigorous Soviet programs for development and deployment of new MIRVed systems, and now the proposed TTB all interact to accelerate the shift in the strategic balance to Soviet advantage.

The second point relates to the procedures used to develop U.S. negotiating positions in the strategic arms limitation area.

I have been impressed throughout both SALT I and SALT II by the fact that the Soviets obviously have a well thought-out negotiating strategy. I have been equally impressed by the lack of adequate procedures on our side to ensure that the U.S. position stems from a clear articulation of basic U.S. objectives, and that specific negotiating positions are developed in a carefully coordinated manner to support those objectives. Additionally, I think it essential that our procedures ensure that you receive in clear and undiluted fashion the judgments of both your political and your military advisers before reaching key decisions on U.S. positions. From my observation, the system as presently operated fails to assure you of such balance in the consideration of major SALT issues, hence runs the risk that positions potentially detrimental to the country's long-term security may be adopted. To rectify this situation, I would recommend strongly that you periodically confer directly with the Secretary of Defense and the

Joint Chiefs of Staff and solicit their advice on these subjects of such far-reaching national importance.

I offer you these views, Mr. President, knowing that we share a deep interest in ensuring the country's future security in a world that hopefully will be characterized by reduced tensions among the major powers. My judgments stem from 36 years of military service, culminated by four years as a member of the Joint Chiefs of Staff, and from my deep conviction that there is no subject more important to the country's future than the successful management of the Strategic Arms Limitation Talks.

I hope these views will be useful to you.

E. R. ZUMWALT, JR.

Mr. TREEN. In response to the question by the chairman, you said something about the Defense Department being ordered not to report certain intelligence information to the White House. Did I understand you correctly?

Admiral ZUMWALT. No, sir. This was my discussion of an analogy where, in connection with that June-July 1974 summit, positions of the Joint Chiefs of Staff were not to be forwarded to the White House. That is, our views were not wanted in writing.

Mr. TREEN. Who stated that?

Admiral ZUMWALT. I was told that by Secretary Schlesinger.

Mr. TREEN. I thought you said the Defense Department had been ordered. In other words, the head of the Defense Department told you?

Admiral ZUMWALT. He told me he had been ordered not to send them.

Mr. TREEN. By whom? Who would have ordered the Secretary of Defense not to inform the White House?

Admiral ZUMWALT. By Secretary Kissinger in his NSC hat, speaking for the President.

Mr. TREEN. Do you mean to tell me Secretary Kissinger would tell the Secretary of Defense that: "In my capacity as Assistant to the President, I am ordering you not to report certain information to the President"?

Admiral ZUMWALT. I suspect he said, "The President doesn't want to receive it." But I can tell you, I was told by Secretary Schlesinger he was under instruction not to send the information over.

Mr. TREEN. I think we will have to pursue that. At least I am very interested in pursuing it.

You stated earlier you felt we were worse off with the SALT treaty than if we had set parity.

What assurance or evidence do you have the Congress of the United States would have supplied the authorization and the funding to equal or to exceed our potential enemies in research, weapons, and so forth?

Before you answer the question, let me make it clear that I am not sure I agree with SALT—agree with the policy behind SALT—but it seems to me that the premise was that the American public, and, in turn the Congress, would not support the kinds of budgets needed to keep up with the Russians, much less exceed them; and consequently we had better face that reality and sign an agreement—one in which it was admitted that the Russians were going to be allowed to catch up so to speak, and then we would have so-called parity.

Wasn't that the underlying thesis of this—that Congress isn't going to supply the money so we might as well face reality?

Admiral ZUMWALT. I think there were clearly evidences of that kind of thinking, but I would not agree that in their heart of hearts the President and Secretary Kissinger really thought they were achieving parity. I believe they felt they were giving the Soviet Union superiority because of their view they could not count on the Congress to support an adequate budget. But I believe their basic failing was their failure to understand that if the people are informed of the facts, that can be turned around.

Chairman PIKE. The time of the gentleman has expired. Mr. Milford.

Mr. MILFORD. Admiral, you stated in the opening paragraph of your statement, "I have been summoned by this committee \* \* \*."

How was the initial contact made between you and any staff member of this committee, or between any member of the committee?

Admiral ZUMWALT. The very first contact was a telephone call from a man named Greg Rushford asking if he could meet with me to discuss the work of this committee. I agreed to do so. He informed me generally of the tasks this committee had and asked me if I were willing to testify. I equivocated somewhat. I didn't relish the opportunity. I told him I would want to be sure that the Department of Defense was kept informed if I decided to go.

In a subsequent telephone call, as I recall, he asked me to meet with Chairman Pike who, as you have heard, asked me to testify. I told him I really would prefer not to but if he felt it was essential, I would.

Mr. MILFORD. You made reference in your statement to the point that you are presently a "news analyst"?

Admiral ZUMWALT. I think I said "sometime news analyst."

Mr. MILFORD. And related the fact that you had written news articles about Soviet cheating for the New York Times and the Washington Star.

Are you being paid for those articles, Admiral?

Admiral ZUMWALT. Yes, sir.

Mr. MILFORD. Will you be writing more articles of this type?

Admiral ZUMWALT. I do intend to keep writing both articles of this type and others not for pay.

Mr. MILFORD. Do you feel your appearance before this committee and the resulting nationwide TV exposure would help in selling these articles in the future?

Admiral ZUMWALT. I said I preferred not to come; I did not ask for open hearings. I will have to let the conclusions be drawn from that.

Mr. MILFORD. You stated in the first paragraph on page 2 of your statement as follows: "I have acquired information subsequent to my retirement from a variety of sources which I believe to be accurate in updating judgments."

With reference to that statement, have you received briefings or information from former colleagues who continue to serve on active duty—either in the Navy or in DOD generally?

Admiral ZUMWALT. I have talked to a whole range of people, from former colleagues, to members of the NSC staff, to people with the State Department, and I have not received what I would call formal briefings or even informal briefings. During the process of discussion, one picks up a lot of information.

Mr. MILFORD. Have you received information from sources or persons that have access to classified information in DOD files?

Admiral ZUMWALT. I am sure everybody with whom I have spoken has access to classified information; yes, sir.

Mr. MILFORD. Have you received information subsequent to your retirement that you know to be classified or sensitive?

Admiral ZUMWALT. Yes, sir; and I have tried very hard not to reveal, and I think I have successfully not revealed, anything that was properly classified.

Mr. MILFORD. On page 6 of your statement, and in other parts of your testimony, you accuse senior policymakers of deliberately denying intelligence analysts very vital bits of information. "As a result of this denial, our intelligence efforts were harmed \* \* \*."

Have I properly summarized that portion of your statement?

Admiral ZUMWALT. Yes, sir, that is an accurate summary of my opinion.

Mr. MILFORD. Since this committee is primarily concerned with the activities and efforts of the intelligence community, and since there has been previous testimony by others that improper intelligence activities have been directed from the policymaking level, does your testimony here today in any way adversely criticize any of our intelligence agencies?

Admiral ZUMWALT. No, sir. I think the thrust of my testimony is to explain that they have had a very tough problem being denied information both by the adversary and by this administration.

Mr. MILFORD. In your capacity as Chief of Naval Operations, did you encounter, or have knowledge of, any improper intelligence activities other than those that were directed by policymaking levels?

Admiral ZUMWALT. No, sir, and I didn't encounter even some of those that were directed by policy levels. For example, when I visited Chile in 1971, in February, as a member of the Joint Chiefs of Staff, I was not informed of what the current covert policy was.

Mr. MILFORD. Mr. Chairman, I reserve the balance of my time, sir.

Chairman PIKE. I would only suggest to you that we are probably not going to get back to you.

Mr. MILFORD. I will yield my time to Mr. Treen.

Mr. TREEN. I thank the gentleman very much for yielding.

Chairman PIKE. The time of the gentleman has expired. You may complete your question.

Mr. TREEN. In connection with the charge that President Ford has not been fully briefed by Secretary Kissinger, can you give us any facts to back up that charge? It is an astounding charge, and if it is true it is obviously, of course, of monumental importance.

Admiral ZUMWALT. Yes, sir, although apparently it wasn't considered so when my article appeared in the New York Times. It created hardly a ripple.

I pointed out in that article that the first time the President was asked about Soviet cheating after Mel Laird wrote his article describing the cheating, the President denied that it occurred and said that the Russians have not used any loopholes and in order to determine whether they have or they haven't, there was a standing consultative group that is a source for the purpose of deciding after investigation

whether there has been any violation, and it came to the conclusion there have been no violations.

Now, he was grossly, badly briefed on that. There is no such investigative function in the SCC. It is composed of half-Russian and half-United States. They have no power to decide anything. It is a debating society. We ask them the questions and they often lie to us, and that is the way in which it has proceeded.

The second time the President was asked he apparently had—right after he said this, Senator Jackson and Senator Buckley and I all came out with public statements expressing alarm at what he had said. He apparently asked for a much more accurate briefing and the second time he admitted the violations, but minimized their import.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Thank you, Mr. Chairman.

Can I yield 30 seconds to Mr. Treen?

Mr. TREEN. Just a followup question: Is it your belief that the President of the United States is still not fully informed and information is being withheld from him?

Admiral ZUMWALT. It is my belief the President of the United States is not aware of the extent to which information is being withheld from him; yes, sir.

Mr. KASTEN. In response to an earlier question from Mr. Treen, you said that the President and Secretary Kissinger—and I believe you mean President Nixon—at that time did not believe, as we began the SALT negotiations, that they were achieving parity. In fact, they believed they were giving the Soviets an advantage; that they were allowing them to achieve not parity but superiority.

Is that a correct interpretation of your statement?

Admiral ZUMWALT. That is it precisely; yes, sir.

Mr. KASTEN. How would it be possible for the top policymakers of this country to enter into an agreement believing, in your opinion, that they were giving the Soviets not parity, but in fact, superiority?

Admiral ZUMWALT. I think it has to do with the explanation Mr. Treen gave of their philosophy; namely, they felt the people would not support, and the Congress would not support, the adequate defense budgets which would provide the negotiating leverage to get true parity.

Mr. KASTEN. The administration has, when confronted with these various violations, claimed that if there have, in fact, been violations of the SALT agreements, these violations are not substantial. I think they used those terms.

What is your view of these violations? Would you classify them as substantial?

Admiral ZUMWALT. Yes, sir, I would classify them as substantial and, having read the analysis that the NSC staff did, I presume for the President, I find it frightening that that kind of what I carefully called fatuous pettifogging would go in to the President, if it did, rather than a look at the big picture—namely, here is what we told the Congress we were going to have: here is what we have got: and it is one heck of a lot different, and the Congress ought to know about it.

Mr. KASTEN. On page 10 of your statement you said, however, that this interference has to be listed as a sixth form of Soviet cheating,

and at that point you were referring to their interference with our means of detection.

What are the other five? This is the first time you have made a list. If you could pinpoint them.

Admiral ZUMWALT. They are the five listed in this article which is attached to tab A.

Mr. KASTEN. Could you read them briefly? A summary of all five. Some of them I think fall into the category of interpretation and others fall into the category of specifics.

Admiral ZUMWALT. That is correct. They all fall into the category of violations of the deal as explained to the Congress.

Mr. KASTEN. Could you read them, please?

Admiral ZUMWALT. The first one had to do with exceeding the size of the authorized silo dimensions.

The second one, the violation of the ABM treaties' prohibition against upgrading air defense.

Third, the deployment of land mobile ICBM's; and

Fourth, construction of silos beyond the authorized number and, fifth, the deployment of significantly larger missiles than were authorized as light missiles.

Mr. KASTEN. And six?

Admiral ZUMWALT. Six was the interference with the national means of detection.

Mr. KASTEN. Of those six, I personally feel that the lack of adequate means of detection is far and away the most serious.

Now, what could a person—a Member of Congress, or a private citizen—do to reverse what you see as a tolerance of our position, which in your opinion means that we can't detect the violation of the SALT agreements? We can't monitor the agreement. What should we do about that?

Admiral ZUMWALT. I think each of us has to make his own commitment. That is why I, distasteful as the chore was, honored Mr. Pike's request to come up here.

I think every Member of Congress owes it to himself to get the administration to report accurately the facts and insist those facts get reported to the people.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. In talking about the Mideast we refer to parity and equivalence of a ratio of 1 to 3—the Israelis versus the Arabs—because of the qualitative superiority of Israeli weaponry, the use of that weaponry, and the quality of American arms versus the arms that the Arab Nations receive from the Soviet Union.

We talk about nuclear parity, or nuclear equivalence, and the fact that our nuclear weaponry is a good deal more accurate than the Russians, that our silos are less vulnerable than the Russian silos. Does this capacity of measuring apples and oranges—how do you really measure parity when you are dealing with two different kinds of systems and two different kinds of weaponry, and two different kinds of capacity? Could you actually see how perhaps some of the so-called Russian violations—the cheating by the Soviet Union—has been predicated on our basic superiority in weaponry, particularly in the accuracy of it?

Admiral ZUMWALT. Sir, I believe what has happened is that the United States, at the moment it signed the SALT I deal, had some qualitative, or technological, superiorities. The Soviets were permitted under the deal to overtake those. The Soviet Union had some force levels, some numerical superiorities, and we were not permitted to overtake those. The Soviet Union is in the process of overtaking every single one of our superiorities, including—I think the intelligence community credits them in their currently deploying systems, the 16, 17, and 18 and 19, with accuracy similar to those of the United States, but with warheads 100 times the destructiveness.

Mr. LEHMAN. In other words, you are saying they have caught up with us on accuracy, but we are lagging behind them in throw weight?

Admiral ZUMWALT. Yes, sir. The Soviet Union is in the process of overtaking, and will in the near future overtake, every qualitative advantage we have in the strategic field that I know of, either by cheating or by authorization.

Mr. ASPIN. Some of this is getting a little goofy. The problem here is that the interim agreement was a 5-year limitation which admitted the Soviet Union had some advantages in numbers because we had advantages in MIRV'd warheads. Now they are going to catch up. The Vladivostok agreement has parity in numbers.

Admiral ZUMWALT. No.

Mr. ASPIN. 2,400 launchers and 1,320 that can be MIRV'd.

Admiral ZUMWALT. That is what the high-level spokesman who travels with the Secretary of State said. At the time he said it, there wasn't even a written piece of paper negotiated and only a Russian interpreter to explain what they talked about. When they got around to agreeing on the deal, it turned out that Backfires have got to be added. It turned out that the 600-mile or 600-kilometer—the high-level spokesman was confused as to which—range limitation, eliminated our option to deploy cruise missiles and not theirs.

Mr. ASPIN. We are talking about missiles. If you want to include backfires, then we have to talk about a lot of other things.

Admiral ZUMWALT. The deal at Vladivostok talked about strategic delivery vehicles including our bombers, but not theirs.

Mr. ASPIN. Would the gentleman yield? The point is that we are going to parity on numbers. That was written into the law in the Jackson amendment that passed the Congress.

The thing that we have signed which does allow the imbalance is, of course, a 5-year agreement which runs out in 1977; we are in the process of trying to negotiate something for the time beyond that.

Now, we will have to see what that is before Congress decides to agree to it. That is still in the process of negotiation. But parity in numbers is part of that calculation.

Admiral ZUMWALT. Wrong.

Mr. ASPIN. Do you mean they are not trying? Are you telling me they are not even trying to get parity?

Admiral ZUMWALT. I am telling you they are not trying to get parity: that as of this moment, the Backfires are going to be added on and that the cruise missile range line will be drawn in such a way that the Soviets will be able to use theirs and we will not be able to use ours. I am telling you also that we have now been prohibited from deploying heavy missiles under the Vladivostok agreement so we can never catch



up with the Soviets in throw weight. We pretended we always had that option. We no longer have it.

Mr. ASPIN. What we are doing is negotiating this agreement. We are in the process of negotiating one, and whether it is a good one or whether it isn't a good one remains to be seen. But I think you can make a very good case that the Russians are absolutely right about that Backfire bomber. If we insist on including Backfire, the Russians have a perfect right to include a lot of other systems that we have that have a one-way mission into the Soviet Union off of the carriers, from bases in Europe.

What I am saying is that this thing is not so simple. And all of this talk that we have heard here about how the United States is not supporting large strategic programs—good God, we have got nuclear warheads increased without number; we have got many more nuclear warheads than the others. I can't think of a major weapons system that we have curtailed because of SALT and, in fact, I can think of several major weapons which have been accelerated or started because of SALT.

In fact, after the signing of the SALT agreement—7 days later—the DSARC was signed to begin cruise missiles. I think you can make the case we wouldn't even have started cruise missiles were it not for SALT. Trident was accelerated because of SALT. SALT has not slowed down our strategic deployment or slowed down the amount of money we spend on strategic forces; it has, in fact, accelerated it.

I think the criticism of SALT is the wrong way around. The trouble with SALT is that it hasn't held down defense spending; it hasn't held down our strategic programs any more than it has held down the Russian programs.

Admiral ZUMWALT. Your facts are simply wrong, Mr. Aspin. When the deal was signed, Melvin Laird came up here and asked the Congress to take out money from the budget greater than the amount he added back to provide the deterrent policy—

Chairman PIKE. Mr. Lehman, your time has long since expired. I have to be fair.

Mr. Johnson.

Mr. JOHNSON. Let's get back to some of the specific violations, Admiral. I don't think I know enough to argue policy at this point.

You alleged in your article, and reaffirm here, that there has been a violation by the construction of larger silos—and increase in the silo dimensions.

Are you aware that there has been testimony before a subcommittee of the Senate on this issue?

Admiral ZUMWALT. No, sir, but I am not surprised to hear it.

Mr. JOHNSON. Would you be surprised to know that there was evidence presented that disagreed with your statement that there had been increased dimensions?

Admiral ZUMWALT. No, sir, I would not be surprised. I think this administration has gone to great lengths to make ambiguous the intelligence analysis.

Mr. JOHNSON. I am not talking about ambiguity. I am talking about the testimony that there had not been a violation of this particular agreement. This section of the agreement.

Admiral ZUMWALT. I think if you will look at the basic intelligence analysis—

Mr. JOHNSON. We can't argue it, because we can't get into the details of who gave the testimony without knowing whether or not it is public testimony.

Admiral ZUMWALT. You will find all we can conclude is that we don't know how deep those silos are. To be sure whether or not they have violated the size. But if one looks at the throw weight and the volume of what comes out of the silo, there is much to support my hypothesis.

Mr. JOHNSON. Throw weight is another thing, but you agree you are not specific on this point. Is it something you have concluded as a result of your analysis?

Admiral ZUMWALT. That is right.

Mr. JOHNSON. Now, let's go to throw weight. You are not implying, are you, that the United States cannot increase its own throw weight, the numbers of warheads or improve its own accuracy under the agreement?

Admiral ZUMWALT. Under the SALT I deal we could have done some of those things. Under the Vladivostok agreement, if it ever worked out into a written agreement, we have been prohibited from building heavy missiles but not throw weight per se.

Mr. JOHNSON. We haven't been under SALT I.

Admiral ZUMWALT. That is correct.

Mr. JOHNSON. So if they increase their throw weight, we have a right under SALT I to increase our throw weight?

Admiral ZUMWALT. We had the right, whether or not they did, because throw weight per se was not prohibited.

Mr. JOHNSON. It wasn't but isn't that the thrust of your argument with respect to the S-119—that they did increase the throw weight and that therefore constitutes a violation for them and not for us?

Admiral ZUMWALT. That came about through what I consider their violation of the significantly heavier language. That is, the U.S. unilateral statement urging both sides to agree they will not deploy as "light" missiles, missiles which were significantly heavier than the largest light missile.

Mr. JOHNSON. You acknowledge there that this is an area for debate once again; don't you?

Admiral ZUMWALT. I acknowledge that there is, in the wording of that language, but not as it was explained to the Congress.

Mr. JOHNSON. You see, what was explained to the Congress is not part of the agreement; it is not part of the written agreement.

I wasn't here when they explained it to Congress. Frankly, I wouldn't be surprised if Congress was either easily misled or wanted to be misled on the truth; it happens all the time, both ways.

Admiral ZUMWALT. I think it is a well recognized principle of international law that a treaty requires ratification and the ratification process involves a host of testimony which provides history for that ratification.

Viewed in that context, the Soviets have violated the treaty as ratified and explained to the Congress—period.

Mr. JOHNSON. As explained to the Congress is one thing. As written is something else.

Now, do you have any evidence of deployment of land mobile ICBM's? Any evidence now, hard evidence?

Admiral ZUMWALT. We have hard evidence of production runs of the SS-16 missile which is capable of being used either as a fixed or a mobile missile.

Mr. JOHNSON. That is not the question. You said deployment of land mobile ICBM's. Do you have any hard evidence of deployment?

Admiral ZUMWALT. Mr. Johnson, I am assuming that what you want is understanding, not just a narrow answer.

Mr. JOHNSON. As a lawyer, I want a narrow answer because I am asking you a narrow question.

Admiral ZUMWALT. The answer is the Soviets have now deployed a production run of a type of missile which can be either in a fixed site or mobile. We don't have evidence they have yet made it mobile. They can stack up hundreds of them and suddenly confront us with a mobile deployment.

[NOTE.—Admiral Zumwalt subsequently added the following statement at the end of the above paragraph: "They have also interfered with our national means of detecting cold. They are using these missiles on launchers and are now mobile."]

Mr. JOHNSON. You regard that as cheating?

Admiral ZUMWALT. If they deploy it, it is in violation of our unilateral declaration.

Mr. JOHNSON. If so, it is cheating; but at this point you have no evidence they are doing that. They have the capability of perhaps doing it?

Admiral ZUMWALT. That is correct.

[NOTE.—Admiral Zumwalt subsequently amended his statement above as follows: "That is correct, but we can't find out because they are covering up possible mobile launchers."]

Mr. JOHNSON. So you call that cheating?

Admiral ZUMWALT. No; I say if they deploy it, it would be cheating.

[NOTE.—Admiral Zumwalt subsequently added the following statement to the sentence above: "We simply don't know if they are cheating, but their covering raises a suspicion that they are."]

Mr. JOHNSON. You said "if they deploy." We have no evidence they are deploying?

Admiral ZUMWALT. I am saying that is the kind of question we should be putting to them—

Mr. JOHNSON. I am talking about cheating now. You said they are cheating and I am trying to find out where they are cheating.

First, they haven't deployed them, but they have developed the capability. Now, is developing the capability cheating?

Admiral ZUMWALT. No; it is—

[NOTE.—Admiral Zumwalt subsequently completed the sentence above as follows: "\* \* \* not, if they haven't deployed mobiles but we can't tell because of their other cheating—that is, their interference with the national means of detection."]

Mr. JOHNSON. That is all I wanted to find out.

Thank you, Mr. Chairman.

Chairman PIKE. The time of the gentleman has expired.

Mr. Field, do you have any questions?

Mr. FIELD. Mr. Chairman, I have a number of questions. We have evidence in our documents which would answer some of the questions raised by Mr. Johnson, which we would like to apprise the Admiral of, but, because I would be referring to specific documents that have been provided to us over the last few weeks, we probably should do it in executive session.

Chairman PIKE. We have a quorum call on now. I would be happy to entertain a motion that we go into executive session.

Mr. McCLORY. Mr. Chairman, I move we resolve the committee into executive session when we resume at 2:15.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Giaimo.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Stanton.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Dellums.

[No response.]

The CLERK. Mr. Murphy.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. Aspin.

Mr. ASPIN. Aye.

The CLERK. Mr. Hayes.

[No response.]

The CLERK. Mr. Lehman.

Chairman PIKE. Aye by proxy.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

Before the meeting adjourns, I want to make one thing clear: It is my understanding, Admiral Zumwalt, that you were not technically retired but were released to inactive duty, and that you therefore retain your top secret clearance at this time. So there is no question about your access to documents being proper, and your testimony to us being proper?

Admiral ZUMWALT. That is correct, sir. Also, Mr. Chairman, I have made a unilateral declaration to my daughter that I would not miss a speaking engagement at her school at 3 p.m., which I can't violate.

Chairman PIKE. Are the members able to get back here at 1:30 instead of 2 o'clock?

If we finish at 2:30, is the school within range?

Admiral ZUMWALT. Yes, sir.

[Admiral Zumwalt subsequently added the following recommendation at this point:]

I urge the Congress to put an end to the temptations of the executive branch to fail to report significant violations of strategic arms limitation agreements, and

the associated protocol, agreed interpretations, and unilateral declarations, by enacting the necessary resolution or statute. This could be a requirement that the chairman of a Senate arms control subcommittee be a member of the Standing Consultative Commission, with the requirement to keep the Congress informed of alleged violations.

[By letter of January 6, 1976, Admiral Zumwalt provided to the committee a supplement to his testimony, which is printed on pp. 1969-1979 of the appendixes.]

[Whereupon, at 12:20 p.m., the committee was recessed to reconvene 1:30 p.m., the same day.]



## THE 1968 TET OFFENSIVE IN SOUTH VIETNAM: II

WEDNESDAY, DECEMBER 3, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, the Honorable Otis G. Pike (chairman) presiding.

Present: Representatives Pike, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Alexander Beam, Vance Hyndman, and Gregory G. Rushford, investigators.

Chairman PIKE. The committee will come to order. I would like to start by again making clear something which I thought we had made clear yesterday but which I heard reported wrong, or thoroughly unclearly, on the tube last night. It has to do with the status of our contempt citations.

I heard a usually accurate reporter state that we are still pursuing a contempt citation pertaining to the SALT subpoena. The fact of the matter is that the SALT citation is one of those on which we have had compliance. The contempt citation outstanding has nothing to do with SALT. It has to do with the recommendations of the State Department for covert actions. I just want to get that clear.

We start today with the business of clearing up some loose ends which our hearings have left undone. We had testimony some time ago regarding intelligence estimates prior to the Tet offensive—the testimony from Mr. Sam Adams in which he was quite critical of the CIA and the military estimators. Today we are giving the military estimators and the CIA an opportunity to respond.

[Mr. Adams testified before the committee on September 18, 1975—see hearings, part 2, pp. 683–719.]

Chairman PIKE. Our first witness will be Gen. Daniel O. Graham, the Director of the Defense Intelligence Agency.

General Graham, if you will take your place and go right ahead with your statement. We are very glad to have you here.

**STATEMENT OF LT. GEN. DANIEL O. GRAHAM, U.S. ARMY, DIRECTOR, DEFENSE INTELLIGENCE AGENCY; ACCOMPANIED BY CHARLES L. DESAULNEIRS, DEFENSE INTELLIGENCE AGENCY**

General GRAHAM. Mr. Chairman, as I understand the purpose of my appearance here today, it is to provide this committee with informa-

tion on the intelligence aspects of the Tet offensive, and, in particular, the allegations presented before this committee by a Mr. Sam Adams, who charges that in 1967 and 1968 civilian and military officials conspired to suppress true intelligence. The truth, as he sees it, was his view of total fighting strength of the enemy in South Vietnam.

I am Lt. Gen. Daniel O. Graham, Director of the Defense Intelligence Agency. I have, during my career, spent over 3 years on the staff of the Director of Central Intelligence at CIA headquarters. During the period of the Tet offensive, I was the chief of the Current Intelligence and Estimates Division, J-2 MACV. My tour in Vietnam was from mid-1967 through mid-1968. I had been in Vietnam on temporary duty for a short period of time in 1966. I am very familiar with the circumstances surrounding the allegations that Mr. Adams has made.

The validity of Mr. Adams' attacks on the reputations of individuals in the CIA, in military intelligence, and of other military and diplomatic leaders rests ultimately on the proposition that his figures were correct and everyone else's figures were "phony." The fact is that the opposite is true. Mr. Adams was quite wrong at the time and is quite wrong now in insisting that there were 600,000 armed VC/NVA troops available to the enemy at the time of the Tet offensive. History, rather than bearing out Mr. Adams' contentions, would prove to any reasonable man that he was wrong.

Adams has contended in a Harper's magazine article and before this committee that the massiveness of the Tet offensive proves that MACV's and the total intelligence community figures for VC armed strength were grossly understated and that, as a result, our forces were surprised at Tet; that 10,000 Americans were killed and 1,200 U.S. aircraft destroyed or damaged on the ground. These contentions are demonstrably not true, and the facts concerning the Tet offensive offer proof. Estimates of the total commitment of VC/NVA forces in the Tet offensive range between 67,000 and 85,000 troops. Neither Mr. Adams nor anyone else has ever challenged these estimates. That is not to say that those figures are unchallengeable; but even if we grant the possibility that they are 100 percent too low and that attacking VC/NVA troops bordered on 170,000, the Tet offensive indicates that figures of enemy strength provided by intelligence were too high, not too low. There was ample evidence at the time of the Tet offensive that the enemy was really scraping the bottom of the barrel to increase the strength of his attack. VC/NVA were captured who had obviously been taken directly from the hospital and drawn into the fight with serious unhealed wounds from previous battles.

We also know that the VC/NVA forces at the last minute rounded up villagers, including teenage boys and girls, to add to the weight of their attacks. Some of these were issued brandnew AK-47 assault rifles, which they not only did not know how to operate but which, when they were captured, were still wrapped in their preservative materials.

This evidence is further reinforced by our knowledge that the replacements for losses in VC units had to come from North Vietnam and were not available in the south. Had the large pools of uncommitted armed strength suggested by Mr. Adams been available, this obviously would not have been necessary.



We were not surprised by the fact of the Tet offensive; we were not surprised by the massiveness of the numbers of troops committed. What surprised us was the rashness of the Tet attacks, which included as objectives major population areas where the enemy could not expect, and did not achieve, military success. Thus, the evidence from the Tet offensive does prove that all estimates were wrong by being too high in terms of total VC combat strength available and that the worst estimate around by far was Mr. Adams' 600,000. Had the Allied forces been attacked by a half million or more troops, one would have to give some credence to Mr. Adams. Since that was not the case, he should be given no credence.

With regard to Mr. Adams' allegations in Harper's magazine—that 10,000 Americans were killed in the Tet offensive—and his allegation before this committee that 1,200 aircraft were destroyed on the ground, it should be apparent that it is Mr. Adams, and not those whom he would accuse, who has an inclination to use phony figures to make a point. The facts are that during the Tet offensive, a little over 2,200 Americans lost their lives, and about 58 U.S. aircraft were destroyed, and about 239 received some damage on the ground.

By the way, Adams states these aircraft were destroyed by artillery fire. We knew very well about North Vietnamese artillery and the only places where we encountered artillery were at Hue and in the DMZ area. Certainly the aircraft were not parked wing tip to wing tip a la Pearl Harbor as Adams alleges. While I do not contend that these losses were insignificant—I mean the real losses—I believe it is necessary to stress that Mr. Adams tends to distort grossly to make his accusations stick.

Mr. Adams has alleged that Gen. Creighton Abrams, General Westmoreland, Ambassador Bunker, and key officials of his own Agency conspired to suppress his figures in favor of what he claims are phony figures. This conspiracy, he alleges, was designed to deceive the American press and public. His chief exhibit is a message from General Abrams to his superiors in Washington, which has been released to this committee.

In my view, any attempt to place General Abrams at the head of some conspiracy to deceive indicates a lack of rationality on the part of the accuser. Anyone even remotely familiar with the character of Creighton Abrams would pick another target for such an accusation. Further, if one reads the message in question, he will see that General Abrams is attempting to prevent phony figures—that is, Adams' figures—from being entered into Washington-level documents describing armed strength of the enemy; quite the opposite from defending phony figures.

With regard to intelligence, this is what General Abrams said:

From the intelligence viewpoint the inclusion of SD and SSD strength figures in an estimate of military capabilities is highly questionable. These forces contain a sizable number of women and old people. They operate entirely in their own hamlets. They are rarely armed, have no real discipline, and almost no military capability. They are no more effective in the military sense than the dozens of other nonmilitary organizations which serve the VC cause in various roles.

Regarding the worries of General Abrams and the others that the addition of Mr. Adams' figures to the order of battle would cause

consternation in the United States because of probable press treatment, I would have to say that such worries were certainly justified. Let me tell you why I think so. The accuracy of General Abrams' predictions as to press reaction to acceptance of Mr. Adams' figures is borne out by an article appearing in the March 20, 1968, edition of the New York Post, which quotes Mr. Adams' 600,000 figure and titles the article, "A Policy of Massive Miscalculation." The 600,000 figure was, according to the story, "suggested by the Central Intelligence Agency." Since I know of no position by the Central Intelligence Agency which coincided with Mr. Adams' position, I presume that the source of this press leak was Mr. Adams himself. In any case, as General Abrams predicted, there is no indication in the press story of the addition of previously uncounted VC strength consisting largely of old people and teenagers without arms or training.

I have pointed out earlier that history, in fact, strongly indicates that Mr. Adams was wrong. Let me say a few words about the reasons his numbers were rejected even before the historical evidence was in.

By his own admission, Adams was the only analyst at CIA headquarters following VC strengths. This is really not true; he was the only one following them from documents and, in any case, I don't even know if he was the only man following captured VC documents. How could he possibly handle the flow and analyze them? I saw the flow of VC documents from my position in Vietnam and no one man could possibly have analyzed them thoroughly. But as opposed to the one man at CIA headquarters, there were at least 30 analysts at MACV headquarters in Saigon following this in far more detail.

In addition, MACV had U.S. and Vietnamese teams at the district and province levels throughout Vietnam specifically charged with providing estimates of guerrilla strength. So there were at least 30 analysts in MACV headquarters following this subject in far more detail, and MACV had these additional teams. MACV analysts viewed these VC documents as well but were unwilling to place the heavy reliance upon them that Adams did. Many of these VC documents were reports of VC recruiters—called proselyters in their own terminology—reporting their success in organizing for the Communists the population of the districts in which they worked. There was a strong tendency in all VC documents reporting to their superiors to overstate success. For instance, VC commanders would report numbers of U.S. and Allied armored personnel carriers destroyed in districts and provinces where we had no armored personnel carriers. Thus, to MACV analysts, VC documents were not an impeccable source of information on VC strength. These analysts gave more credence to the counts of guerrilla strength coming from the districts of Vietnam which had been reported to them. It should be noted that MACV observers counted guerrillas simply as guerrillas and would not be able to distinguish between a simple guerrilla, a self-defense guerrilla, a secret self-defense guerrilla, or an assault youth guerrilla—categories which Adams wished to add to guerrilla strength. We in MACV had no illusions about the precision of the counts of guerrillas reported in this fashion or in any fashion.

In fact, we tended to consider them, if anything, too high. There was a natural inclination toward prudence in such counts from the field,

since over-optimism regarding the guerrilla threat in a report from one province or district could result in less attention to its security, and the men doing the reporting—both United States and Vietnamese—lived and worked in those districts.

Finally, we noted that the level of guerrilla activity in all of South Vietnam had dropped off sharply since about the beginning of 1966 and by mid-1967 was at such a low ebb that it was difficult to explain the low level of activity when viewed against our estimates in Saigon of 70,000 to 90,000 guerrillas.

Mr. Adams' general approach was to take a VC document that suggested certain levels of strength in the VC apparatus in one district and multiply those numbers by numbers of districts. This, to MACV, seemed rather simple-minded and reflected a mechanical approach by a Washington-based analyst totally unfamiliar with the vast differences from district to district and province to province in Vietnam.

In sum, Mr. Adams' figures were not rejected because of a conspiracy; they were rejected because his analysis was bad in the view of most intelligence officers in Washington and MACV. His views were rejected only after his agency gave him more than ample opportunity to present his thesis to other analysts. As events unfolded, Mr. Adams was, in my view, proved conclusively wrong. The biggest mistake that we in MACV made out in Saigon was to compromise with Mr. Adams and add 24,000 personnel to the VC/NVA order of battle on the basis of his arguments, thus making us 24,000 men more in error than we had been.

It may well be that the only adherents to Adams' views of a 600,000-man VC ready to fight were in the enemy high command. They obviously expected a massive uprising to accompany their Tet offensive. Perhaps they too were taken in by VC documents inflating their strength.

In my view, Mr. Adams does a hard-pressed U.S. intelligence community an enormous disservice by accusing its leaders and other prominent Americans of outright mendacity. He has long been on a vendetta against anyone who would not accept his unique and wrong-headed view of VC/NVA order of battle. The high point of his efforts was his much-publicized testimony before this committee 2½ months ago.

I appreciate this opportunity to defend the reputations of the men he maligned. Thank you.

Chairman PIKE. Thank you very much, General Graham. I must say that is a very strong statement and I know that many of the members will want to ask questions about it.

We do have a procedural problem. We have scheduled a total, I think, of eight witnesses today. What I am going to suggest to the members of the committee is that we hear from two other witnesses this morning prior to questioning and that we lead off with Mr. Colby and then hear the remaining witnesses this afternoon. I think that is the only way we are going to get through, very frankly.

General Graham, I don't care whether you stay there or take your other seat for a while. We will have our next two witnesses—I think their statements are relatively short—come up. When they are finished we will ask all three of you to respond to questions.

Our next witnesses are Mr. Richard G. McArthur and Col. Henry A. Shockley.

Mr. McArthur, if you would go first, and Colonel Shockley, if you would give your statement right after Mr. McArthur.

**STATEMENTS OF RICHARD G. McARTHUR, FORMER COMMISSIONED MILITARY INTELLIGENCE OFFICER, U.S. ARMY, AND COL. HENRY A. SHOCKLEY, FORMER CHIEF OF INTELLIGENCE COLLECTION IN VIETNAM**

Mr. McARTHUR. Mr. Chairman, members of the committee. I am a former commissioned military intelligence officer, U.S. Army, having served as a first lieutenant. In June 1967, I was assigned to the order of battle study section of the Combined Intelligence Center, Saigon, Vietnam. My specific duty was as an intelligence analyst, and I worked solely with guerrilla force strength figures in compiling totals for order of battle statistics and for specific studies on that particular classification of persons.

During the initial phase of my assignment, I was sent to 16 of South Vietnam's 44 provinces to secure figures from U.S. sector advisors and commanders in the field. These figures were to be used in the Official MACV order of battle summary update. While in these provinces, I found that figures given me many times were radically different from figures in the current order of battle summary. I also received heated inquiries from various advisors and field commanders as to why published figures differed so much from field input. I could not answer these questions; however, I assured these sources that this job was now my responsibility, that I would do the best job I knew how, and that there should be no further major discrepancies in the future. I explained that field input did not necessarily represent the total picture, and that recently captured documents and other sources of information might cause these figures to vary.

After 4 weeks in the field, I returned to the Combined Intelligence Center and began working on the guerrilla portion of the order of battle summary. I finished my study and arrived at what I considered to be a good representative estimate of Vietcong guerrilla forces in South Vietnam.

On or about February 7, 1968, I departed on R. & R. to Bangkok, Thailand. Upon my return in approximately 6 days, I found that the completed order of battle summary contained guerrilla figures much lower than those I had submitted. I want to make very clear at this point that I alone had responsibility in the military for these figures. Now I saw that the figures in the order of battle study had been dropped to a figure of about 40,000. This represented about half of my original figure. I was extremely concerned and took the matter to my immediate superior. I asked why the figures were so drastically lowered but he offered no explanation concerning the figure reduction.

I then approached the chief of the order of battle section who told me—and this is a direct quote: "Lie a little, Mac, lie a little." I refused to do so. A few days later I was transferred to the 519th Military Intelligence Compound in an adjoining province where I completed my Vietnam tour. While at this compound I was placed in charge of a supply warehouse—a position I certainly was not trained for at the 1st Army Intelligence School. I returned to the United States and was

assigned to the 528th MI at Fort Meade, Md. Here I was offered a promotion to captain—which I declined in order to pursue civilian opportunities.

By my testimony here, it is not my intention to be critical of either the U.S. military society or our role in Vietnam. During my military service, I was privileged to both serve under, and be associated with, some persons I felt to be of the highest integrity and character.

My purpose here is to relate to those present, and to expose to the public, the reckless falsification of information by a few individuals, the true facts of which I always felt the American people and our Government rightly deserved. This testimony has given me the opportunity to do so.

Thank you very much.

Chairman PIKE. Colonel Shockley, you go right ahead with your statement.

Colonel SHOCKLEY. Sir, in order to put this in perspective I think it is necessary to point out that I was the chief of intelligence collection in Vietnam from March of 1974 to 1975, in case there is some concern about the time gap.

The monograph that brought me to your attention was designed for intra-Department of Defense use. Its purpose was to point out what I perceived to be the problem areas in our Vietnam experience in the hope that similar mistakes would not again appear. Although I did not seek this opportunity to testify I hope that my words may be of use in helping to avoid similar errors in the future. I have no ax to grind, no desire to point an accusing finger at the many and well-meaning personnel who were involved in the reporting from Vietnam.

Necessarily, my remarks are narrowly confined to my own experiences and reflect my own perspective. At the outset, it is wise to establish the major difference in perspective. I held a differing view of how intelligence should be reported from the field than did the U.S. mission in Vietnam. To elaborate, my previous experience in intelligence was as a Washington level analyst. As a result I believed then that there was a need for as full and complete a flow of raw material to Washington as possible. The prevailing view in Saigon was that there was much that was not needed at the Washington level and that raw reports were best analyzed on the ground and sent in as part of a mission assessment.

In my view we erred in our judgment of the South Vietnamese military for three reasons. First, we gained our perspective of the fighting capabilities of the South Vietnamese in vastly different circumstances than those that obtained in March and April of 1975. Our perspective was gained during the 1972 Easter offensive when, after initial defeat, the South Vietnamese acquitted themselves well. But that success was accomplished under the protective umbrella of a powerful U.S. air arm, superior artillery, and a functioning, efficient and sufficient U.S.-run logistics system. Further, the North Vietnamese were acutely aware of the threat posed by a considerable U.S. ground presence still in country.

Despite the withdrawal of U.S. forces and the political difficulties of reintroducing U.S. forces into the war area, we did not change our

views of the South Vietnamese. This favorable tenor was reinforced during the first year after U.S. withdrawal. The North Vietnamese failed to mount a meaningful challenge and the South Vietnamese went on the offensive and were fairly successful. The fact that these victories were gained against numerically inferior forces did not destroy the luster of success.

The perception thus gained was of an efficient, aggressive military force that was capable of defending its territory. Not only was there no attempt to challenge this perception, there was no mechanism by which it could be challenged. In my view, then and now, we should have made as a matter of priority a meaningful evaluation system. This was necessary not only because the support systems on which the Vietnamese had come to rely were gone, but also because the South Vietnamese now had an added mission. As the engineers of a highly controversial cease-fire, subject to press and public skepticism, validation of the cease-fire became an American policy imperative. In effect then, the South Vietnamese armed forces became an instrument of U.S. policy.

The second point I would make is that as a collection entity the Defense Attaché Office lacked the charter to collect against the armed forces of the Republic of Vietnam. A long-standing restriction against collecting on the friendly military forces mysteriously remained in being. This was not peculiar to Vietnam. We have consistently used different criteria to gather information concerning our friends than that which we use to gain knowledge of our enemies. While we look mainly to quantitative factors when we regard our client military forces, we spend large sums of money to gain a more detailed and qualitative view of our enemies. This is the situation that obtained in Vietnam in March of 1974 when I arrived and, despite formal and informal petition to Washington, remained in effect.

The capability was there, however, as more than 50 persons were directly assigned to intelligence collection. Liaison personnel were in daily contact with key staff members at the headquarters of the joint general staff, the Vietnamese air force, the navy and the four operational corps. Access to key decisionmakers was thus routinely available.

Without official sanction to conduct positive collection against the armed forces of the South Vietnamese, field liaison personnel were limited to observation and to subject interviews with decisionmakers. Limitations were imposed on access by the mission and reports were routinely edited.

The prevailing restrictions on collection and reporting limited the flow of information on the armed forces to a great extent. But the major obstacle to reporting was the prevailing attitude within the mission. In a sense the mission considered itself a beleaguered camp. The press, from its own observations and leaks from disaffected personnel in both the mission and in Washington, cast doubts about the viability of the Vietnamese Government, the stayability of the South Vietnamese armed forces, and the veracity of the U.S. mission statements. The guideline was: "What purpose does this report serve? If it corrects nothing but only opens the Vietnamese to additional criticism, it should not be reported."

To keep things in perspective it is wise to point out here that positive action was taken within the mission to correct reported abuses

by the Government and the armed forces of Vietnam. As one of the largest missions in the world there was also a decided reluctance to bother Washington with minor problems.

Under these prevailing circumstances public acknowledgment of faults within the Government of Vietnam hierarchy was done with extreme reluctance. Also, official reporting through even highly classified and compartmented intelligence channels was subjected to extreme scrutiny. Information that might be detrimental to the Vietnamese was carefully screened and in several cases edited out.

Thus the deadly combination of "can do" and "let's not feed a hostile press" led well-meaning and patriotic officials to suppress even routine reports that indicated the operational readiness, the morale, or the general capability of the armed forces was not what it should be. Of more concern was a decided tendency on the part of the mission to compensate for sometimes misleading media coverage by presenting information on Vietnam in a positive and oftentimes favorable light. The net result of this policy was to lull Washington level officials into a false sense of security concerning Vietnam.

Mission reluctance to be the bearer of bad news was matched by a perceived lack of interest in Vietnam in Washington. Vietnam had been officially disposed of as a political and an emotional issue. It had receded, thankfully, to the 10th page of the newspaper and to a weekly 2-minute segment on the evening news. Most Americans seemed blissfully unaware that we still retained a sizable mission there.

It is a moot point whether the central flaw in the South Vietnamese armed forces would have been discernible if we had a positive collection effort. But even given the reluctance of the mission to identify deficiencies and apathy in Washington, sufficient information did get through to point up problems in leadership, training, supply and distribution, combat strengths, and declining troop morale. While there was not enough substance to reach firm opinions about the armed forces, there was enough negative information creeping into an otherwise rosy picture that called for more information and a more positive system of evaluation of these forces that should have been made.

The motivation for suppression of information is nearly always rooted in a higher sense of calling. Well-meaning, patriotic people kept pertinent information away from other well-meaning, patriotic people in a belief that they were carrying out their duties. In this case the policy imperative—keep Vietnam out of the headlines—took precedence over the other imperative—know your friends. It is ironic but had Vietnam not fallen so swiftly and ingloriously, no one would have questioned the actions of the mission.

Vietnam should not remain as only a painful reminder of failure. The lessons implicit in its fall should be explored and thoroughly examined, no matter how distasteful. If we are to continue the policy of supplying worthy nations with the weapons of war to defend themselves, the potential for similar misestimation is great.

By the act of assisting another nation we make not only a financial but an emotional commitment as well. We need to temper commitment with a realistic and if need be hardnosed skepticism concerning the capability of the recipient nation to use its military capability wisely and efficiently. In Vietnam we lost our perspective and our

objectivity. We can ill afford to become more concerned about criticism than military capability.

There is a need for pragmatic measurement criteria whereby the client military force and his potential adversary can be evaluated in realistic and like terms. We have for too long looked at enemy forces with one set of criteria and friendly forces with yet another. We must look at both forces—our clients and their potential adversary—in the same light.

[The following supplemental statement was subsequently submitted by Colonel Shockley:]

#### THE DEFENSE ATTACHÉ OFFICE IN SAIGON

To avoid misunderstanding of the role of the Defense Attaché Office in Saigon I am offering these comments concerning its organizational anomalies. It was, first of all, unlike most DAO's. It was primarily a logistics organization with its primary orientation being equipment delivery and end item usage. The organization which numbered approximately 1,200 U.S. personnel when I joined it only had 80 or so intelligence professionals. These were divided into a current intelligence shop which prepared a daily cable and prepared weekly and monthly threat assessments and my office, a collection unit.

Because of the overriding logistics problems both Generals Murray and Smith were able to concentrate primarily on the current intelligence product. They each reviewed the daily cable, received periodic briefings and were kept current on all matters concerning enemy and friendly movement. Because of their heavy work loads they were not shown the over 1,000 reports a month that came from my office. Only occasional reports that were of particular interest were flagged to their attention. The very nature of intelligence reporting from human sources makes it behind the events. As a result there was little need to see the standard intelligence reports.

Both Generals were aware of the reporting restrictions based on charter. Both supported attempts to have those restrictions eased. Without a clear charter for intelligence collection and reporting on friendly forces their hands were tied when the Embassy insisted that all reports that had a "political" flavor would be routed through the Political/Military Section of the Mission.

In the context that the term "scant attention to intelligence" was used it meant and should have read "little time to worry about intelligence operations." There was no intention to imply that either General Murray or General Smith were not interested, or that they had anything to do with editing out negative information. Certainly there was no involvement by these two Generals in what I termed "deliberate and reflexive manipulation of information, restrictions on collection and censorship of reporting."

H. A. SHOCKLEY.

Chairman PIKE. Thank you very much, Colonel Shockley, for helping to bring us up to date on the situation.

We will now operate under the 5-minute rule. General Graham, would you return to the witness table.

General Graham, I was a supporter of the war in Vietnam, I guess long after my district told me not to be. But I do recall that in 1966 I wrote a column for the local papers back home and it had to do with the fact that on April 24, 1966, we on the Armed Services Committee were suddenly told that 182,000 Vietcong, who had previously been classified as wounded, were no longer classified as wounded. In other words, we no longer claimed to have wounded 182,000 Vietcong.

Can you tell me how that particular change in our statistics came about?

General GRAHAM. No.

Chairman PIKE. We have certain assumptions involved in all of these estimates of enemy strength; is that not correct?



General GRAHAM. Yes. If we have all the facts, you don't have to make an intelligence estimate.

Chairman PIKE. So we would like to pin down the difference concerning what you refer to as Mr. Adams' estimates. Isn't it true that the CIA generally supported Mr. Adams' figures?

General GRAHAM. The CIA never agreed that you should take the categories of people that Mr. Adams was talking about and declare them to be part of the Vietcong Army—to be armed soldiers.

Chairman PIKE. What I am trying to do is to find out exactly what we are talking about. You keep referring to Mr. Adams' estimate of 600,000 troops. For example, weren't 100,000 of those political cadres?

General GRAHAM. About 90,000 were political cadre, at least in our figures. I forget the figure he had.

Chairman PIKE. No, in Mr. Adams' figures. Wasn't that correct?

General GRAHAM. He always refers to his total as the Vietcong Army troops and so forth. He never makes the distinction, as his CIA intelligence colleagues did quite properly, between people who are not part of the military threat and people who really are a military threat.

Chairman PIKE. You are the one who said he referred to the 600,000 troops, and I am trying to figure out what those troops consisted of.

In his Harper's article, for example, he broke that 600,000 figure down into active troops, I think, or regular troops of 100,000. What was your figure for regular troops at that time?

General GRAHAM. I don't think there was ever much quarrel about the regular troops. It varied from time to time, but I think that, during the period he is talking about, MACV agreed with the CIA and the whole intelligence community that there were about 118,000 troops in organized units.

Chairman PIKE. Right.

Now, there was a question of guerrilla militia in his 600,000 figure, of which he listed as half of it 300,000 for guerrilla militia. What figure do you have?

General GRAHAM. We had 70,000 to 90,000 guerrillas which, incidentally, straddles the 80,000 that Lieutenant McArthur was talking about.

Chairman PIKE. So there is a very substantial difference between your estimates and Mr. Adams' estimates.

Now, what was your total figure for enemy troops just prior to the Tet offensive?

General GRAHAM. The total was 299,000 troops, just before the Tet offensive.

Chairman PIKE. And you think that the maximum number that could have been committed to that offensive was about 85,000?

General GRAHAM. That was the estimate. I don't say that is the maximum that could have been, but there is plenty of evidence that they threw into the fight everybody they could get their hands on. They held out a few NVA units—held them out or they were beaten up too badly to get in the fight. But there were certainly not another 85,000 nor anywhere near 600,000.

Chairman PIKE. Let us assume that your figure of 85,000 is correct. That would have been 85 percent of all of their regular troops. Obviously, they didn't have 85 percent of all of their regular troops in the field at the time of that attack, did they?

General GRAHAM. No; they did not commit all of the regular troops.

Chairman PIKE. They didn't even have 85 percent of all the regular troops, did they? Did an American Army, or did any army, ever have 85 percent of its troops, its regular troops, in an attack at one time?

General GRAHAM. Well, I can't answer that. I imagine it has happened, yes. —

Chairman PIKE. In World War II, what was the biggest battle we ever had and what percentage of our active troops was ever engaged in that battle?

General GRAHAM. Well, I suppose the biggest battle we had was the landings at Cherbourg, and certainly if you want to count the people who were being drafted in the Army back in the United States, it wasn't a large percentage.

Chairman PIKE. My point is, General, I don't really think that you and Mr. Adams are all that far apart on regular troops. It is my understanding that you are not just differing with Mr. Adams: you are differing with the CIA. Wasn't the CIA's total figure 500,000?

General GRAHAM. Mr. Pike, I understand that Mr. Colby has released to you an NIE, which discusses this problem—an NIE which MACV supported. So I was not in any quarrel, or at least MACV was not in any quarrel, with CIA in stating that these kinds of people were around.

The basic problem was, do you take these people who are unarmed and are no danger to our troops and put them, as Mr. Adams would say, in the VC Army or in the enemy army.

Chairman PIKE. My time has expired.

Mr. McClory.

Mr. McCLORY. General, what do you suppose Mr. Adams' motive is in providing these figures that you describe as phony figures?

General GRAHAM. Well, I hesitate to ascribe motives to people, but it does seem to me that for 7 years—in 1966, he came up with some figures that were rejected. If you read his article, you find that there are only two kinds of people who had anything to do with it—a handful of good guys believed him and everybody else was a villain. There is nobody in his article who said, "Hey, I really don't buy your analysis." I think he has a hangup on this problem, and he is determined to get it out.

Mr. McCLORY. You heard the testimony of Colonel Shockley about the pattern that seemed to persist of not stirring up the press and trying to make things look good. Do you think Colonel Shockley has any bad motives here this morning?

General GRAHAM. No. I think that Colonel Shockley's problem was with the mission out there. In fact, though, there was enough information coming through, as he felt, to be able to assess the South Vietnamese Army pretty well. I don't see where Colonel Shockley is accusing people of mendacity, as Mr. Adams has accused people.

Mr. McCLORY. He is merely showing that the pattern established at the time when Mr. Adams was in Vietnam apparently persisted throughout the entire war.

General GRAHAM. No; I don't agree with that.

Mr. McCLORY. I went to Vietnam very early. I went in October–November 1965 and visited with General Westmoreland. He reported to me the number of troops that were coming across the border from

North Vietnam and the number that we were killing as soon as they came across the border. He was able, in very simplistic terms, to explain to me that the war was going to end just about a year after my visit there in October 1965.

Apparently, a lot of troops appeared from other places, and the war dragged on for about 10 years—or actually 7 or 8 years after that. Do you suppose he had any motives to mislead by oversimplifying or not including figures? Or what would be the basis for that?

General GRAHAM. Well, I don't know, Mr. McClory. I am afraid you would have to ask General Westmoreland about that.

Mr. McCLORY. Were you supplying figures to the general?

General GRAHAM. At that time, no, sir, I was not.

Mr. McCLORY. You started in 1967?

General GRAHAM. Yes, sir.

Mr. McCLORY. You don't want to deny, do you, that Vietnam was a terrible disaster and that the Tet offensive itself was a disaster?

General GRAHAM. Well, I don't think anybody could look back on the Vietnam episode and say it was a great success. I think we will have to count it as a disaster.

I think there is a misunderstanding about Tet. The Tet offensive was a calamitous defeat for the Vietcong because they tried to do military things they could not do. The only sprinkling of success they had militarily was get into Hue and stay there for a couple of weeks, but I think they got results they never counted on.

What they did count on was that somehow, if they made an all-out attack with everything they had against the populated centers, there was enough sympathy for them inside those populated areas that there would be a mass uprising and the war would be over.

But militarily, they lost very heavily; they practically destroyed their whole southern arm of the VC operation.

Mr. McCLORY. We are trying to determine to what extent intelligence is utilized effectively, both politically and militarily. Certainly you would concede, would you not, that the intelligence made available in Vietnam was either misused or not used, or at any rate was not utilized effectively or analyzed effectively for the benefit of the military, and for that matter, politically as well?

General GRAHAM. No, sir. I wouldn't agree with that. Thirty-six hours before the Tet offensive, all American forces were put on full alert; and if we hadn't done that, you might have got the casualties like 10,000 that Mr. Adams talked about. But in fact, we gave warning. I think the intelligence was first rate out there.

We had a problem, of course, with the 1-year tour. When you put a guy in a country, he should stay there a while. If he is only there for a year, it is tough to do the intelligence job; but despite that toughness, not only the military intelligence guys but the CIA and the National Security Agency did one splendid job in Vietnam on intelligence. That doesn't detract from the fact that the whole thing turned out to be a fiasco, but the intelligence people did a good job.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

General Graham, I have reviewed your statement and the testimony and the cables of that period carefully, and I might say I applaud your audacity in being here this morning.

General GRAHAM. Thank you, I think.

Mr. DELLUMS. I think it is important that the chairman and the members of the committee do remember that a constant interest is the effectiveness of the intelligence community and in this case particularly the military, the DIA and MACV.

As we listen to the several witnesses, I hope that the committee will regularly come back to the question that is posed for consideration here, and that is, did we get correct intelligence, particularly from the military?

Now, General Graham, you attended a CIA Order of Battle Conference in April 1968. At that meeting, what did the CIA say about Adams' figures?

General GRAHAM. Well, the CIA didn't present them as Adams' figures. The CIA had looked at the figures. I wouldn't say the CIA as a whole, but certain of their analysts. They had an argument that the total figures could be up to 500,000, but they didn't make the case that all those categories should be listed as order of battle.

There was a long discussion on this matter. Analysts did not agree, MACV and CINCPAC analysts did not agree; DIA at that time had a position somewhat in between what we were saying out in Saigon, in Honolulu, and what some of the analysts in the CIA were saying, but I didn't find persuasive the arguments of those analysts putting forth the 500,000 figure.

Frankly, Mr. Dellums, I didn't think there should be any quantification of those several defense forces because I didn't think there was any way to get a handle on them.

Mr. DELLUMS. So they did give you a figure between 400,000 and 600,000?

General GRAHAM. No; they gave me a figure of a little over 500,000.

Mr. DELLUMS. And the figure they supported was higher than the figure that you had estimated?

General GRAHAM. Considerably higher than the figure I estimated and higher than the figure that MACV estimated.

Mr. DELLUMS. According to your comments on page 2—and for the record I would like to clarify—Mr. Adams on at least two occasions has testified that 2,000 people were killed in the Tet offensive.

I know—if you go back and check the verbatim transcript—I asked Mr. Adams a question as to whether it was 10,000, and he responded 2,000; so I think it is incorrect for you to keep hammering the gentleman on the question of 10,000. He has stated on public occasions, 2,000—which is a more accurate figure.

General GRAHAM. That is right; he corrected himself on that one. He may correct himself on the aircraft later on.

Mr. DELLUMS. On page 2 of your testimony, you talk about VC committed and VC activity. Is it not the same as order of battle strength? That is not the same as order of battle strength, is it?

General GRAHAM. I didn't understand that question.

Mr. DELLUMS. The VC committed and VC activity is not the same as order of battle strength, is it?

General GRAHAM. No.

Mr. DELLUMS. Now, on page 2, you speak of committed VC of between 57,000 and 85,000. How many VC did MACV say they killed in the Tet offensive? Was it 60,000?

General GRAHAM. No. As I recall those figures, over 30,000 were killed in the Tet offensive.

Mr. DELLUMS. On page 4 of your testimony, you say 58 planes were lost and 280 received some damage. I am sure you recall General Westmoreland cabling after Tet for air replacements. What figure was asked for by General Westmoreland?

General GRAHAM. I don't know.

Mr. DELLUMS. Wasn't it 500?

General GRAHAM. I don't know. Incidentally, you weren't here when I corrected that figure. The actual figure for U.S. aircraft damaged on the ground during the Tet offensive is 239.

Mr. DELLUMS. The question of damage relates to the duration of the attack. How long was it from the attack to the retaking of Hue? I think you can manipulate the statistics there based on your definition of duration.

General GRAHAM. The Tet offensive started on January 30, and they were cleared out of Hue within 2 or 3 weeks; it must have been toward the end of February.

Mr. DELLUMS. If you took the period of attack until the retaking of Hue, and totaled the three official categories—destroyed, heavily damaged, lightly damaged—would the total damaged aircraft be closer to 1,200 than 300?

General GRAHAM. No; it would not. These are the figures that cover exactly that period of the Tet offensive.

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman.

General, on page 3 of your testimony, you say:

We were not surprised by the fact of the Tet offensive; we were not surprised by the "massiveness" of the numbers of troops committed. What surprised us was the rashness of the Tet attacks, which included as objectives major population areas where the enemy could not expect, and did not achieve, military success.

And yet you just told us that 239 of our airplanes were damaged.

How were these planes damaged, if you had intelligence 36 hours before an attack, and you could only equate the attack with Pearl Harbor in terms of aircraft lost?

General GRAHAM. These aircraft were lost over the period of a month, Mr. Murphy. They were generally lost because small numbers of sappers came on to an airfield and threw charges around and damaged or destroyed aircraft. In some cases they were hit by mortar fire, and it is not too big a trick to get two or three guys with a few rounds of mortar ammunition in close enough to send a few rounds into Bien Hoa.

A new kind of weapon had showed up at that time, and we knew all about it. It was a 122-millimeter rocket that the Soviets had supplied, which they usually fire in sort of a katusha outfit, a lot of them at once. They were carrying them one at a time, putting them on cross-sticks and letting them fly into the airfield.

Mr. MURPHY. Would you, as our intelligence officer, classify the Tet offensive as a surprise attack?

General GRAHAM. It was an attempted surprise attack. They did everything they could to try to keep us from finding out about it. We

did predict well in advance, both in military intelligence and CIA, that there was going to be an attack around Tet.

Mr. MURPHY. They are teaching a course now at the Military Academy, using a textbook entitled "Readings in Current Military History" by Lt. Col. Dave Palmer. I will quote you from the course text: "The first thing to understand about Giap's Tet offensive is that it was an allied intelligence failure ranking with Pearl Harbor in 1941 or the Ardennes offensive in 1944. The North Vietnamese gained complete surprise." This is what they are teaching at the Academy.

General GRAHAM. Well, they shouldn't, because it is wrong. General Westmoreland put out an order 36 hours before that attack to all commands to put them on full alert. You are not surprised when that happens, and we were not surprised.

Mr. MURPHY. How many alerts were given prior to that? Were these alerts routinely given to metropolitan areas and defense areas?

General GRAHAM. No. They were not routinely given by General Westmoreland. We usually had problems in one part of the country or another. In this case we had a countrywide assault. They just jumped everything they could get at from one end of that country to the other.

Mr. MURPHY. Isn't it a fact that one-third of the South Vietnamese Army was given leave the very week of that attack? Again, you say we had a warning.

General GRAHAM. That is partially true, Mr. Murphy. Let me see if I can straighten you out on that. The fact is that the South Vietnamese really couldn't believe, despite how much evidence you poured in—or a lot of them couldn't believe—anybody would attack anybody during Tet. It had been the custom of the Vietnamese to call off the war at Tet. The enemy had agreed to a 7-day cease-fire at Tet, and it was very hard for these Vietnamese commanders to say to their troops, "No, you have to stay because the intelligence people say that despite all tradition the VC are going to attack." They used to let the government people go into VC areas to visit their families and the VC guys would come to Saigon to visit their families, and they let that go and they let the people go both directions, and then go back after the Tet holiday and go back to war.

This had been going on for 20 years in Vietnam, and they were used to it. It was hard for the commanders to believe that anybody would really violate as sacred a day as Tet.

But I will say that, to their credit, a lot of them said they believed the intelligence and overrode these emotional reluctances to buy the intelligence. And the commander at Ban Me Thuot kept every man he had and would not let them go on holiday. Whether a third was gone or not, Mr. Murphy, I don't know. A lot of them were gone, and some of them left before the intelligence indicators got strong enough that they could have been turned around.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen?

Mr. TREEN. Thank you, Mr. Chairman.

It seems to me that our purpose here—or at least my purpose—is to get at the essential allegations by Mr. Adams. They were twofold: First of all, that it was the aim of our leadership to fool the press, the Congress and the American public about the numbers in South Viet-

nam prior to Tet: and, second, that the incorrect estimates—incorrect according to Adams—had a significant bearing on Tet.

Let me ask a couple of questions of Mr. McArthur and Colonel Shockley first. Then, General Graham, I have questions for you.

Colonel Shockley, you are not suggesting that you have any information on the subject of our intelligence estimates in 1967 and early 1968, are you?

Colonel SHOCKLEY. No, sir, I am not.

Mr. TREEN. You were completely away from that scene at that time; is that right?

Colonel SHOCKLEY. Yes, sir.

Mr. TREEN. Mr. McArthur, in your testimony you suggested that your estimate of guerrilla figures, after being out in the field for 4 weeks, was about 80,000.

Mr. McARTHUR. That is correct.

Mr. TREEN. It so happens the special national intelligence estimate issued November 13, 1967, gives that strength at 70,000 to 90,000. That is the figure given for the guerrillas, so it was not cut in half as you suggested.

Mr. McARTHUR. What is that date, sir?

Mr. TREEN. This is November 1967.

Mr. McARTHUR. I am speaking about February of 1968, immediately after the Tet offensive.

Mr. TREEN. The estimate at that time was 40,000?

Mr. McARTHUR. That is correct.

Mr. TREEN. It was cut as a result of the Tet offensive?

Mr. McARTHUR. That is correct.

Mr. TREEN. When did you go out in the field?

Mr. McARTHUR. I went out in the field in July.

Mr. TREEN. July what?

Mr. McARTHUR. In July 1967.

Mr. TREEN. You spent 4 weeks out there?

Mr. McARTHUR. That is correct.

Mr. TREEN. This is an estimate made following your going back to headquarters and suggesting that it was 80,000 people. This is an estimate made subsequent to that and it was 70,000 to 90,000 guerrillas.

Mr. McARTHUR. The cut I am speaking of occurred in February, as I say.

Mr. TREEN. After the Tet offensive?

Mr. McARTHUR. That is correct.

Mr. TREEN. And presumably based upon actual experience?

Mr. McARTHUR. I don't know upon what it was based. I never received an answer to that question.

Mr. TREEN. Who was it who told you to lie a little?

Mr. McARTHUR. It was a lieutenant colonel in the Marines.

Mr. TREEN. What was his name?

Mr. McARTHUR. Weiler.

Mr. TREEN. Is he living?

Mr. McARTHUR. I have no idea.

Mr. TREEN. General Graham, do you know?

General GRAHAM. Yes. Paul Weiler is dead.

Mr. TREEN. General Graham, getting to the point—the major point of Mr. Adams' testimony that there was deliberate distortion, fooling of the American public, press, and Congress—the telegram by General Abrams to General Wheeler was used as part of his efforts. Do you have a copy of that telegram?

General GRAHAM. Yes, sir, I have it here.

Mr. TREEN. Would you explain that telegram?

General GRAHAM. Well, I can't explain all of that—the reason for that being sent at the time—but, looking at the report, the message, from General Abrams, he is making a strong plea not to put questionable figures into the order of battle figure; not to add old women, and old men, and teenagers into the counts in the order of battle. I think he makes an intelligent point there that must have been given to him by his intelligence people.

He goes on to say that if you add those people in, the first thing you know you are going to have everybody back in the United States confused by a sudden leap in the total size of the VC forces and he said that nobody will read the fine print that says these aren't really forces. That is how I read his telegram.

Mr. TREEN. You say what General Abrams was worried about was that including what was called self defense and SSD forces in the actual numbers would be confusing to the American public?

General GRAHAM. That is right.

Mr. TREEN. You have had an opportunity, I am sure, to review—since it has been declassified—the NIE estimate of November 1967?

General GRAHAM. I have.

Mr. TREEN. According to this report, the estimate in November of 1967—2½ months before Tet—was 118,000 regular, VC and NVA forces; 35,000 to 40,000 service troops; 70,000 to 90,000 guerrillas, for a total of 223,000 to 248,000 at that time.

In your testimony you estimated at about that time, shortly before that time, 299,000; so your estimate was actually higher than the CIA estimate, although there could be some change in categories.

General GRAHAM. I think if you added up all the high sides of the figures in that estimate, you come up to 333,000 people, including the political infrastructure, and so forth. And military assistance—Saigon supported this estimate. What they didn't want was to have it changed to reflect Mr. Adams' rather unique views. So, as far as CIA and DIA and MACV were concerned, they bought this. I personally wouldn't.

Chairman PIKE. The time of the gentleman has expired.

Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. McArthur, in your statement you express a concern that the order of battle figures had been reduced to about half of those that you had received from the field commanders. Sir, isn't it sort of a well known fact that in all wars the front line units nearly always tend to overestimate the number of enemy that is out in front of them?

Mr. McARTHUR. The fact is, the study created was based not on front line estimates, but it was based on three factors.

Mr. MILFORD. Did you not say you received this from field commanders.



Mr. McARTHUR. A portion of it. This was on a monthly basis. There were three basic factors:

One was captured documents—documents captured on dead enemy troops in the field.

The second was interrogation reports. If one of the enemy was captured, he would be interrogated, following a certain pattern of questioning as to how many guerrillas were in his area or hamlet or wherever he was picked up.

A third factor was estimates from the field.

Also, I would like to bring in a fact here. You mentioned estimates from the field. This is one of the horrible things that happened as a result of playing around with figures. I found, when I went out to the field, that the commanders themselves were very disillusioned by the fact that figures they would send up to MACV, when published, were completely different.

After a few months of this, the commanders would not be very concerned about what type figures they were sending in.

Mr. MILFORD. Mr. McArthur, excuse me for interrupting, but I don't think you are responding to my question.

The question was, aren't field estimates, as shown in past history, always shown to be excessively high?

Mr. McARTHUR. I really have no idea, sir.

Mr. MILFORD. General Graham, in your experience?

General GRAHAM. An intelligence officer in the field, and the commanders, usually take a very prudent view of the enemy. He is not going to say the enemy is not there when there is a possibility that he is. This means that you tend to inflate the size of the enemy facing you and I think it is a fairly consistent thing.

Mr. MILFORD. On page 3 of your statement you said, "My purpose here is to relate to those present, and to expose to the public, the reckless falsification of information by a few individuals, the true facts of which I always felt the American people and our Government rightly deserved."

Mr. McArthur, what are the names and rank or position of the "few persons" you accuse of reckless falsification of information?

Mr. McARTHUR. I can only make a general statement concerning that because I have no actual proof these figures were falsified by any certain individuals. I know the figures were changed. However, I have no proof as to who did the changing because I was away on vacation at the time. In other words, I knew what the figures were that I had submitted. When I returned, I saw that they had been changed drastically.

Mr. MILFORD. In your capacity there, did you have access to total intelligence input, where you have the ability to totally evaluate that input?

Mr. McARTHUR. I certainly did, sir. As far as the guerrilla figures are concerned, that is correct.

I provided the total guerrilla figure broken down by corps area and province.

Mr. MILFORD. This is an awesome responsibility to place on a first lieutenant.

Mr. McARTHUR. I inherited the job and the gentleman who had it previous to me was a captain. Someone died and he had to return to the United States and I fell into it.

Mr. MILFORD. General Graham, do you agree with this discussion?

General GRAHAM. No. It seems to me what may have happened after the Tet offensive—he was not there—was that we killed a lot of people; we knew a lot of people were wounded; we knew they picked up a lot of people who were probably guerrillas and put them into main force units and probably picked up more after the fight to try to make up for the losses. The data he was using to come up with his 80,000 was probably pre-Tet. So it seems to me—although I am speculating now. I don't know whether this is what happened or not—but it makes sense to say you have got to take those casualties out of some unit. They took them—some of them at least—out of his guerrilla figures, and he considers that to be falsifying the records. It seems to me to be a fairly sensible, if not necessarily correct, line of analysis.

Chairman PIKE. The time of the gentleman has expired.

Mr. Johnson.

Mr. JOHNSON. Mr. Chairman, I just have a couple of questions and then I would like to yield the balance of my time to Mr. Treen.

General Graham, you make a very strong statement that there was no collusion and no attempted distortion of figures to mislead the American people, at least insofar as you are concerned.

General GRAHAM. Yes.

Mr. JOHNSON. We have other documents—I suppose they are still classified; they are marked “secret” so we can't talk about them.

Are you familiar with any of the documents or any of the information that was sent to William P. Bundy from INR?

General GRAHAM. No, Mr. Johnson. At that time I was a lieutenant colonel and things at that level really didn't hit my desk. I wouldn't know anything about that.

Mr. JOHNSON. The documents talk about how you deal with the increased number of enemy defections, increased number of enemy captured, reports about morale, recruitment, weapons losses. All of this, as you examine these documents, tends to substantiate the feeling that the American people were misled.

As I say, this does not come from you, since it came from the INR to Bundy, but there is at least one thing that would tend to substantiate that.

Now, your response to Mr. Treen's question about the cable still leaves a question in my mind. If you can explain it more fully, I would like to give you this opportunity to.

General GRAHAM. I didn't write the cable. Again, four-star generals don't consult lieutenant colonels very often on what he is going to send back to his boss, General Wheeler; so I don't know how to judge that cable except, knowing the author pretty well over the years, I can say nobody who ever knew General Abrams would believe that he was trying to deceive the press or the public. He is a very frank, straightforward man. Anybody who knows him knows that.

I can say, as I testified, that his worries about what would happen in the press if they suddenly got hold of some number that looked large, actually happened when this 600,000 figure of Mr. Adams was leaked to the press.

Mr. JOHNSON. Did you have any knowledge about the cable traffic that went between the Embassy and the State Department with respect to this?

General GRAHAM. I wouldn't know anything about that, Mr. Johnson.

Mr. JOHNSON. Thank you. I yield to Mr. Treen.

Mr. TREEN. General Graham, I am looking at a document called CINCPAC/MACV Dissent to CIA OB Analysis, \*SVN.

This is an estimate made after Tet. I think you are familiar with this, or are you?

In the third paragraph it is stated that "Considering available evidence we estimate the current strength of the guerrilla force as 50,000 to 70,000." That again is a much higher figure than the 40,000 that Mr. McArthur was referring to. This is your estimate after the Tet offensive?

General GRAHAM. That is right.

Mr. TREEN. Apparently that was downgraded from the 70,000 to the 90,000 estimate of November. On what basis?

General GRAHAM. I don't remember exactly the basis, but I think the explanation I just gave Mr. Milford probably accounts for it. They did take a lot of casualties. There were a lot of losses and a lot of people captured and we knew that a lot of people were wounded as well, although that was always hard to count. It just didn't seem to make much sense to hold that guerrilla figure exactly where it was, so it came down some.

Mr. TREEN. As I understand paragraph No. 2 of the Abrams cable referred to by Mr. Adams in making his charge of deliberate distortion, General Abrams is saying that if the SD—self-defense, and the SSD—the secret self-defense strength—figures are included in the overall enemy strength, the figure will be 420,000 to 431,000, depending upon minor variations.

Now, what he was saying is, in effect, that these particular forces should not be included in the order of battle. Is that correct?

General GRAHAM. That is exactly right, Mr. Treen.

Mr. TREEN. The point I want to get to is that the national intelligence estimate that came out in November 1967 talked about these. There was no withholding of information that these forces existed. We are talking about numbers. Whether they were included in the Armed Forces or not—and the suggestion, it seems to me, made by the Adams testimony, was that we distorted the overall figures—the fact of the matter is in the November national intelligence estimate reference is made to the self-defense forces and the secret self-defense forces and talks about a figure of 150,000—which it is estimated is a little bit on the high side. Even if it is and you add that to the figures that were agreed to, we come up to 400,000. So we are not arguing about total numbers; we are arguing about the category in which they were to be included.

Is it not the burden of the Abrams telegram that if you include these people in the order of battle you are going to mislead the American public?

General GRAHAM. That is the essence of that telegram as I read it.

Chairman PIKE. The time of the gentleman has expired.

Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

General, the staff has given me a document, which was apparently declassified this morning, entitled "Intelligence Warning of the Tet Offensive in South Vietnam."

Procedurally, it was produced by a working group under the chairmanship of R. J. Smith and there was representation from the DIA on that group, along with CIA, INR, and NSA.

Out of context there are, I think, three interesting conclusions drawn which I would like to state for the record very quickly and perhaps have your comments on.

They suggest, first, that although warning had been provided, the intensity, coordination and timing of the enemy attack were not fully anticipated and that Ambassador Bunker and General Westmoreland attest to this. A most important factor was timing—whether U.S. or GVN officials believed the enemy would attack during Tet.

The second major unexpected element was the number of simultaneous attacks mounted. U.S. intelligence had given the enemy a capability of attacking virtually all of the points which he did in fact attack and of mounting coordinated attacks in a number of areas. He was not, however, granted a specific capability for coordinated attacks on all areas at once, and more important, the nature of the targets was not anticipated.

Third, they conclude that most commanders and intelligence officers at all levels "did not visualize the enemy as capable of accomplishing his stated goals as they appeared in propaganda and in captured documents. Prevailing estimates of attrition, infiltration, local recruitment, reports of low morale, and a long series of defeats had degraded our image of the enemy."

General, it seems to me that your testimony today continues the urging of a pre-Tet vision of who the enemy was and what their capabilities were. For example, you spent a good deal of time today telling us about the cripples, the children, the old folks, a few sappers lobbing bombs around, a few individualized mortar men with mortars put up on cross sticks having some effect. You spent a good deal of time being sensitive about the reputations of colleagues in the field. You indicated that you weren't surprised by Tet but by its rashness, and so forth.

Don't you think it was part of the job to be estimating the enemy's rashness and taking into account the timing, intensity, coordination, numbers of points hit, perhaps listening somewhat to the injunction that CIA had been, I think, relatively consistently putting forth, and that was that we were involved in a people's war and that is the way the enemy saw that conflict?

General GRAHAM. Well, on the last point I don't think anybody was arguing with CIA on that point. It certainly was a people's war.

Mr. HAYES. How do you assess the three conclusions that this report seems to make?

General GRAHAM. If you will list them for me, I will take them one at a time.

Mr. HAYES. The idea of not understanding the intensity, coordination and timing.

General GRAHAM. We knew something big was coming, but we really doubted that the VC had the command and control capacity to launch that series of attacks and get it coordinated.

Again, we were right because they jumped the gun in military region 5 and they didn't get off in a coordinated fashion.

Mr. HAYES. That seems to contradict the third conclusion which I will ask you to comment on, and that is that they say most commanders and intelligence officers didn't visualize the enemy as capable of accomplishing the stated goals as they appeared in propaganda.

General GRAHAM. That is right. The stated goals were to cause a massive uprising and seize the populated areas. We didn't think them capable of doing that. We were right. They did not.

Mr. HAYES. Instead, what they did do was manage to cause a massive uprising in the United States instead?

General GRAHAM. That is right; they caused one here.

Mr. HAYES. Didn't you think it was an important thing to assess the domestic effect?

General GRAHAM. No, it is not proper for an intelligence officer to assess effects—to go around assessing the American people.

Mr. HAYES. It seems to me that is what we are getting right down to, because you are assessing the American people to a great degree here. According to testimony we had this morning, well-meaning patriots were responding to higher senses of calling as a motivation for suppressing information; others see it as more insidious, as a conspiracy. We have had testimony on that. Now we seem to have the effect that intelligence doesn't really need to be assessing at all what a combat activity is going to do to the domestic population, or what is going to happen. But in fact they were assessing it, and you have assessed it when you talk about what happens if the newspapers get hold of some other piece of information. And apparently your superiors were concerned about that fact too. So you see, you can't have it both ways.

General GRAHAM. Yes, I can. My commander can worry about the press, but as an intelligence man I am doing my intelligence job. I am not going to judge what the VC are going to do at Tet on the grounds of what effect it is going to have on the American population. You are asking me to do the sort of thing I thought this business was set up to get us out of.

Mr. HAYES. You have been doing this sort of thing in your testimony this morning and I think it is only fair to begin to ask you about that.

Chairman PIKE. The time of the gentleman has expired.

Mr. LEHMAN. Mr. Chairman, in order not to be redundant I think it would be better if I withheld my questions and reserved my time.

Chairman PIKE. Mr. Field.

Mr. FIELD. General Graham, I would like to review with you and move step by step through the estimates of the irregular forces and try to determine whether your dispute is actually with Mr. Adams or is more properly with the CIA.

Now, in August 1966, according to CIA, there was the first attempt to revise the irregular forces figure. The CIA reports "Recently acquired documentary evidence now being studied in detail suggests that our holding on the numerical strength operation of these irregulars—now carried at around 110,000—may require drastic upward revision."

Were you aware of that movement at that time?

General GRAHAM. No. At that time I was strictly on Soviet affairs.

Mr. FIELD. A few months later—on the 23d of November 1966, a considerable period of time before the Tet offensive—this document to Mr. Robert Komer, special assistant to the President, from the CIA, says, "This 356,000 to 371,000-man estimate is based on current order of battle holdings. A reappraisal of the strength of Communist irregular forces which is currently underway indicates that accepted (that is, MACV) estimates of the strength of Vietcong irregular forces may have drastically understated their growth, possibly by as much as 200,000 persons."

Were you aware of that development in November 1966? That apparently did go to the President.

General GRAHAM. It was true that for quite a while out in Vietnam, U.S. intelligence had its hands full in just trying to get a handle on main force units and what they did was just accept the figure that the South Vietnamese had on how many guerillas are there; and it seems to me, you know, some preposterously large figure came out counting each guerrilla—

Mr. FIELD. You have missed my point.

General GRAHAM. I will get back to that.

There was a requirement to reexamine those figures and see how they went—what the figure should be.

There were opinions around that they were way too low and I think that opinion was shared by some of the analysts at MACV at that time.

Mr. FIELD. By January of 1967, we have a Central Intelligence Agency memorandum for the Director which says, "A VC effort to press the guerrilla war will pose a serious challenge for the allied forces. \* \* \* For some years it has been estimated that there were about 100,000–200,000 irregulars, but there is now documentary evidence which strongly suggests that at the beginning of 1965, irregular strength was around 200,000. \* \* \*"

Did DIA agree with that estimate?

General GRAHAM. Yes, I agree with that now. In 1965 they had a much larger guerrilla force than they had in 1968.

Mr. FIELD. Now, in May 1967 we have a CIA special assessment prepared for Secretary McNamara. This says, "We believe the Vietcong paramilitary and political organization is still probably far larger than official U.S. order of battle statistics indicate." This is CIA. This is not Adams speaking now.

"We estimate, however, that the strength of the so-called 'administrative services' (and noncombat support troops) is in the 75,000–100,000 range, that the strength of the 'irregulars'—which at this point you maintain is 110,000 or something like that—"is in the 200,000 range, and that the number of Vietcong political personnel is in the 80,000 range. Thus the overall strength of the Communists' organized force structure in South Vietnam is probably in the 500,000 range and may even be higher."

Now, Mr. Colby will testify this afternoon, if he reads his prepared statement, that at this point he felt you were all together on a 500,000 figure or higher. Is that your opinion?

General GRAHAM. If you read that carefully, Mr. Field, you will see they are not saying that the order of battle is 500,000. He is talking about the whole structure.

One of the problems we always had with that 500,000- or 600,000-type figure out in the field was that on the one hand it tended to inflate the military strength and, on the other hand, it tended to grossly understate what the total numbers of people available to the VC in one way or another would be.

Mr. FIELD. It says "the overall strength of the Communists' organized force structure . . . is in the 500,000 range and may even be higher." It sounds to me like they are saying the Communists had 500,000 or more—let's be specific on this. They say the irregulars are 200,000. Now, are you maintaining at this point the irregulars are less than that?

General GRAHAM. It depends on what you mean by irregulars. Are you counting the secret self-defense people in there and so forth? You can make a case for that, depending on what the man meant by the terms he used.

I recommend that you talk to the guy who used them. I didn't.

Chairman PIKE. We will continue to go around again until we run out of time.

General Graham, after the Tet offensive, didn't General Westmoreland request 500 additional aircraft as replacements for aircraft lost in the Tet offensive?

General GRAHAM. I have no idea, Mr. Pike.

Chairman PIKE. I want to start by saying that I agree with you completely in your characterization of the character of General Abrams. I think he was a man of impeccable character. That is my personal judgment. I don't think, really, that this has much to do with the question of how things were reported to the press and the Congress.

Was Congress ever told about this CIA estimate of 500,000 people?

General GRAHAM. The estimate which you have in your hands was certainly not withheld from Congress, I am sure. Somebody on the Hill was able to get hold of this estimate which has the figures agreed to by CIA and the military.

Chairman PIKE. You have characterized this telegram from General Abrams to General Wheeler as being largely concerned with who is to be considered in the order of battle and who is not. The reason for the concern—the principal reason for the concern—however, was not whether or not they should be in the order of battle. The principal reason for the concern was press reaction, was it not?

General GRAHAM. I can't tell you what the principal reasons were.

Chairman PIKE. Doesn't it say in the telegram "The press reaction to these inflated figures is of much greater concern." Isn't that what the telegram says? You have got it there. That is what he is talking about.

He goes on and he says, "All those who have an incorrect view of the war will be reinforced and the task will become more difficult."

What was a "correct view of the war" and what was an "incorrect view of the war"?

General GRAHAM. There were so many views of that war that I would hesitate to try to say which was correct and which incorrect. I will tell you what mine was if you want it, but I will not try to judge which is correct.

Chairman PIKE. Obviously, from this telegram you have to come to the conclusion that somebody did determine what a "correct view

of the war" was and somebody had determined what an "incorrect view of the war" was, don't you?

General GRAHAM. It is apparent from the message that General Abrams felt that somebody had an incorrect view of the war. I think it is self-evident.

Chairman PIKE. But you have no idea what General Abrams was talking about when he referred to a "correct view of the war" and an "incorrect view of the war?"

General GRAHAM. I have none that I would testify to.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. General, when I was questioning you earlier, you described many successful aspects of the Tet offensive as far as our side was concerned.

Let me read to you two sentences from a textbook published by the U.S. Military Academy. It is current military history.

"The first thing to understand about Giap's Tet offensive is that it was an allied intelligence failure ranking with Pearl Harbor in 1941 or the Ardennes offensive in 1944. The North Vietnamese gained complete surprise." I judge you would regard that as a completely inaccurate statement, would you not?

General GRAHAM. Totally inaccurate.

Mr. McCLORY. Have you communicated with the U.S. Military Academy?

General GRAHAM. I think I will on that story.

Mr. McCLORY. Tell me this: You came back through Washington, did you not, and took part in this order of battle conference in April 1968?

General GRAHAM. Indeed I did.

Mr. McCLORY. That is when we got into the discussion about the figures—in which Mr. Adams' figures were considered, and there was this discrepancy, at any rate, between the 440,000 and 600,000. I mean that was the discussion. You discussed the figures of the enemy strength, did you not?

General GRAHAM. We discussed all types of order of battle problems and, as I recall, at that time one of the points of view being put forward was that there were over 500,000 troops.

Mr. McCLORY. The enemy strength was discussed, was it not?

General GRAHAM. Right.

Mr. McCLORY. Mr. George Carver attended that meeting as well?

General GRAHAM. I believe George was there.

Mr. McCLORY. He later then communicated that to President Johnson and within 10 days President Johnson elected not to seek reelection. Are you aware of that?

General GRAHAM. I don't know of that—

Mr. McCLORY. You wouldn't know whether or not that information—that bad news—had any adverse effect on President Johnson's decision, would you?

General GRAHAM. No, I don't.

Mr. McCLORY. One of the things that disturbs me and many, many other Americans—particularly Members of Congress—who were watching this conflict in Vietnam where the terrible disasters which our search and destroy missions were experiencing because of



ambushes. I had occasion during that period to inquire about the ambushing and, as a matter of fact, I spoke with some of the military leaders in Vietnam about that.

Now, the fact of the situation was that the leaks of information between the South Vietnamese military leaders, and our MACV—our advisory group there—were so bad that we adopted as a policy the informing of those who were advising what our battle plan was at about the moment that the plan was being implemented. Isn't that correct?

General GRAHAM. Well, you are correct, I think, that it was difficult to keep information away from the Vietcong in Vietnam. They very frequently were able to get information on what our forces were doing and often those leaks were from the ARVN sources.

Of course, you know that the enemy intelligence man working on that problem is bound to work in ARVN because a Vietcong showing up in a U.S. outfit would be pretty easy to pick up. So he worked with the ARVN and they were rather successful at it.

Mr. McCLODY. Did you note the testimony of Mr. Adams with regard to another intelligence disaster—as far as an attempt to seal off the Ho Chi Minh Trail is concerned—and the withholding of intelligence, or withholding of the battle plan from our own forces, which nevertheless was in the hands of the enemy, even down at the low level, long in advance of the plan being executed?

General GRAHAM. I saw that. Considering other inaccuracies Mr. Adams puts out, I don't know whether it is right or not.

Mr. McCLODY. You don't know anything about that?

General GRAHAM. The Lamson 519, I believe, or 719? I was not in Vietnam at the time.

Chairman PIKE. The time of the gentleman has expired.

Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

General Graham, I would like to get a little more specific in following on with the question of the chairman with respect to the correct or incorrect perception of the war.

Is it not true that the military did have a World War II perception of the war in Vietnam and did not really come to grips with the reality that we were fighting a guerrilla war and people's war, where sticks, rocks, stones—whatever was available to people—would be used in that war, and the fact that the military never came to grips with that created a very, very serious problem for the military?

General GRAHAM. No; I don't think that is true, Mr. Dellums.

I believe we didn't do as well as we might have. I think one of our problems was the intelligence problem because the intelligence guy, just like anybody else, is spending 1 year out there. You need more than that amount of time on the ground to be really effective in intelligence. It was always amazing to me they did as well as they did on 1-year tours.

Mr. DELLUMS. I would like to read from a document that has now been declassified, a memorandum to Mr. William Bundy on Vietnam from Fred Green. I think it goes to the question of the correct or incorrect perception of the war. It is an effort to give information to the American press:

"Continuing increase in enemy defections \* \* \*. [Unclassified]" And it goes on: "[Comment: However, the rate of increase this year may well be below that of last year. \* \* \* Confidential/NoForn]."

No. 2. Another statement to the American press: "Continuing increase in the number of enemy captured on the battlefield. [Unclassified] [Comment: Avoid statistics since they are tentative at any given time and since they may conflict with what we are telling the ICRC on prisoners of war. \* \* \* Confidential/NoForn]."

No. 3. Tell this to the American press: "Increasing reports indicate declining enemy morale and rising logistic problems. [Unclassified] [Comment: Morale problems seem to have affected primarily the low-level echelons and, in any event, have not significantly weakened Communist resolve. \* \* \* Confidential/NoForn]."

This goes on for pages. What we have here is an unclassified statement to lull the American press to sleep, to lull the American people to sleep, to lull the Congress to sleep, while the classified comment speaks in contradiction.

Isn't this a clear example of how the military attempted to mislead the American people through the American press with this kind of cable? At one level a soft statement, at another level another statement, almost in direct contradiction to the statement being given to the American press.

This is from intelligence sources in Vietnam, so we are not talking about something snatched out of the sky.

General GRAHAM. I don't believe it points to that at all.

Mr. DELLUMS. Well, what does this say then?

General GRAHAM. I think what it says—and I don't know whose memorandum that is—but it says to be careful in using statistics on captured enemy personnel because they come in pretty raw and you may have to correct yourself.

This says several things. Talking about the Chieu Hoi program, watch out talking about it. While we have had a lot of Chieu Hoi, a lot of them are not very high-level people.

Mr. DELLUMS. That is classified. Only a few people know about that, and those are people who are cleared. But the press is not cleared. They get the unclassified version, and the unclassified version is a total distortion of what the classified statement is really all about. Doesn't that result in totally misleading the American people and the Congress through the press?

General GRAHAM. No; I don't think so.

Going down these one by one, it says, "Here is something you say about the Chieu Hoi problem, but here is something else you had better know if you release these figures, and that is the vast majority of defectors are soft core, low-level personnel."

Chairman PIKE. Wouldn't a fair summary of that document, however, be that all of the good news was unclassified and all of the bad news was classified?

General GRAHAM. No; it wouldn't. Much of that same good news about morale and so forth was in the document that has been released or declassified.

Mr. DELLUMS. You indicated we did a good job in Vietnam. I would like to ask you a couple of questions that go to that issue. Is

it your opinion that hundreds, if not thousands, of enemy personnel had infiltrated United States and South Vietnamese operations in the late sixties?

General GRAHAM. It is my view that there were thousands of informants—

Mr. DELLUMS. Somewhere around 30,000 people?

General GRAHAM. No. There was not a heavy infiltration.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

I will try to get back to the point again.

In the testimony by Mr. Adams on September 18 he says, and I quote from his testimony at page 1859:

My story begins in the second half of 1966. During that period, I discovered at CIA headquarters a series of documents which suggested that the strength of the Communist forces in Vietnam—then officially carried at just under 300,000—was more likely double, or close to 600,000.

Now, is there anyone on the military side or the CIA side who has agreed with Adams' assessment of 600,000 whom you know of?

General GRAHAM. Not to my knowledge has anyone agreed to the estimate of 600,000. I might add there was a document captured in May 1967, in which the VC gave their total strength in South Vietnam and they gave the figure at 285,000 people. We didn't buy that. We had a different figure. But if someone like Mr. Adams wants to go on documents, there is one that gives the whole figure.

Mr. TREEN. In November 1967, adding up the regular forces, service groups, and the guerrillas, all of whom are estimated in numerical terms, adding the Vietcong infrastructure figure of 75,000 to 85,000 you come up to 298,000 or 333,000. Then if you add the secret defense forces and the SSD forces estimated at around 120,000, you come up with 418,000 to 453,000.

All of the information contained in this estimate was available to all of our military people from November 1967 right up to Tet; is that correct?

General GRAHAM. That is right, and, Mr. Treen, if you will look at that document about the conference in April 1968, you will find that the military guys, MACV and CINCPAC, were defending this estimate which has that kind of figure in it. So accusations that we had to stay under 300,000 are not true because we were supporting a figure in there that is greater than that.

Mr. TREEN. In other words, if you add all these figures by the CIA report and MACV together, you still get into the order of 450,000, but you don't get anywhere near the 600,000.

General GRAHAM. That is right.

Mr. TREEN. Were you ever contacted by the staff prior to Mr. Adams coming here—the committee staff—for your side of their story?

General GRAHAM. No, never.

Mr. TREEN. When were you contacted?

General GRAHAM. I was contacted by the staff about a week ago to say that I would—

Mr. TREEN. A week ago from now?

General GRAHAM. Yes.

Mr. TREEN. Never prior to that time for an interview or any testimony?

General GRAHAM. No.

Mr. TREEN. Now the bottom line question I think is this, at least in my judgment: Assuming that this information was available—and I assume it was; it is a published document which shows all these categories adding up to 418,453, something in that range—is it your opinion that that estimate was correct, and what effect did these estimates have on our preparedness for the Tet offensive, for good or for bad?

General GRAHAM. Well, Mr. Treen, I personally thought the estimates were too high. I would not have tried to put that 150,000 figure in there, which is very loose, and I don't believe it. But as far as the total military intelligence crowd was concerned—and at one point I represented them, coming back here to confer with CIA—we bought this estimate.

Now as far as those numbers having any effect on our being surprised or not being surprised, having any effect whatsoever on what happened at the Tet offensive, in my view they had none. The only numbers surprise we got at Tet was that, as I testified, they tried to throw everything they could lay their hands on at us, and the number was so small. That is why I say historically my figures were too high, MACV's were too high, but Mr. Adams' were out of the ball park.

Mr. TREEN. Mr. Adams' point was that incorrect estimates caused a calamity at Tet.

General GRAHAM. That is right, and I think that is absolutely wrong.

Chairman PIKE. The time of the gentleman has expired.

The Chair is going to violate the rules of the committee by making one little comment as to why we couldn't talk to General Graham earlier than we did. The administration was not allowing these people to talk to us at the time that Mr. Adams testified.

Mr. TREEN. Up to what point, Mr. Chairman? That order was lifted quite some time ago.

Chairman PIKE. That is true, but you are also aware I told you a long time ago we intended to have General Graham come and testify.

Mr. TREEN. It would have been nice to have had him at the same time.

Chairman PIKE. I would have preferred that. The President was not permitting these people to come talk to us at that time.

Mr. Milford.

Mr. MILFORD. Mr. McArthur, would you please summarize your total training and experience as an intelligence analyst.

Mr. McARTHUR. Yes. I was trained at Fort Holabird, Md., for approximately 6 months. I don't remember the exact date.

Mr. MILFORD. Trained as an intelligence analyst?

Mr. McARTHUR. For 2 months in country, about 6 months altogether.

Mr. MILFORD. Four months of training and 6 months of work as an intelligence analyst?

Mr. McARTHUR. Four months of training and 2 months of working.

Mr. MILFORD. What is your present business or profession?

Mr. McARTHUR. I am unemployed at the moment. The last company I was with went bankrupt recently.

Mr. MILFORD. Have you written or do you plan to write any books or articles about your experience in Vietnam?

Mr. McARTHUR. I have never written any articles and I don't know right now if I ever intend to or not.

Mr. MILFORD. How did you come to the attention of this committee?

Mr. McARTHUR. I believe Mr. Adams mentioned me in his testimony, sir.

Mr. MILFORD. Were you contacted by the committee staff?

Mr. McARTHUR. Yes, I was.

Mr. MILFORD. I yield back the balance of my time, Mr. Chairman.

Chairman PIKE. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

General, President Johnson in his book said we knew a show of strength was coming. It was more massive than we anticipated. You say it was not more massive than you in MACV anticipated; is that correct?

General GRAHAM. That is right, Mr. Johnson. Had I written that phrase, I would not have written it that way.

Mr. JOHNSON. In Mr. Adams' testimony he said with respect to the briefing that was prepared during August, before the offensive, discussing the order of battle that a CIA official named Paul Walsh wrote this: "I must rank [the briefing] as one of the greatest snow jobs since Potemkin constructed his village." It was so bad it "gives us all the justification we need to go straight again."

Were you aware that was Mr. Walsh's written statement at that time?

General GRAHAM. I don't know whether that was true or not. You will have to ask Mr. Walsh.

Mr. JOHNSON. We have another statement and allegation that says Mr. George Allen, Deputy Assistant for Vietnamese Affairs, to the Director, Mr. Helms, wrote that Westmoreland's numbers were contrived and phony and his estimates were controlled by a desire to stay under 300,000.

General GRAHAM. I don't know. I read that in Mr. Adams' testimony but I can't testify as to whether that is a correct quote or not.

Mr. JOHNSON. I will yield to the gentleman from California if he desires more time.

Mr. DELLUMS. Thank you very much.

General, this afternoon Mr. Colby, tentative Director of the CIA, will testify that Mr. Adams' estimate of 30,000 agents having infiltrated United States and South Vietnamese forces is correct; he will testify that the Agency estimate of 30,000 was a fully coordinated report which had been concurred in by all parts of the Agency—30,000.

Now, is it not true that the U.S. forces had one person infiltrating the North Vietnamese, and isn't it this kind of intelligence competence that you are attempting to defend here this morning?

How many agents did we have who infiltrated?

General GRAHAM. I don't know. I recommend you ask Mr. Colby about it because that was in the CIA bailiwick and not mine.

Mr. DELLUMS. Did DIA have any agents infiltrating?

General GRAHAM. DIA had nobody in Vietnam.

Mr. DELLUMS. Isn't it true there was one person who was killed in the Tet offensive, which brought the total of our agents to zero, compared with 30,000 of them who infiltrated us?

General GRAHAM. Mr. Colby didn't say there were 30,000 agents; he says there were 300.

Mr. DELLUMS. The 30,000 versus 300 score that Mr. Adams recounts is wrong, because Mr. Adams attributed the number 300 to the Agency. The fact is that the Agency estimate of 30,000 was a fully coordinated report which had been concurred in by all parts of the Agency. Even that part in which Mr. Adams claims to have identified only 300 agents, the CIA is saying, "We agree; Mr. Adams is wrong when he says we only estimated 300." They say they agree Mr. Adams' figure was correct. Thirty thousand. We only had one.

General GRAHAM. Mr. Adams said 30,000 spies and I will leave it to Mr. Colby to defend his own figures, but I am sure he is not going to tell you there were 30,000 spies.

Mr. DELLUMS. Do you disagree with the CIA testimony on this?

General GRAHAM. I have no estimate of my own on how many spies were in the VC apparatus.

Mr. DELLUMS. I find that an interesting response because you were supposed to be in charge of the intelligence-gathering apparatus in this area.

General GRAHAM. Then you understand wrong.

Mr. DELLUMS. Let me try to engage you and Colonel Shockley in a brief colloquy.

Colonel Shockley, as a professional, would you assess with this committee the validity of the famous crossover thesis?

But before you do, General Graham, you are the author of this crossover thesis; is that not correct?

General GRAHAM. Right.

Mr. DELLUMS. Colonel Shockley, would you give us your professional evaluation of the crossover thesis?

Chairman PIKE. I must say you are asking an awful lot of a colonel in the presence of a three-star general, but it is entirely up to you.

General GRAHAM. Go ahead if you know anything about it—which I doubt.

Mr. DELLUMS. If I am keeping you from getting your star, Colonel—

Chairman PIKE. Mr. Dellums, I have used up the balance of your time.

You may respond if you wish to, Colonel.

Colonel SHOCKLEY. I am not sufficiently knowledgeable of this particular thesis and I would therefore prefer not to comment.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Fortunately, General, he asked the question I was going to ask. What is the crossover thesis, briefly?

General GRAHAM. That is a name that got tacked on a piece of analysis that has nothing to do with the total enemy strength at the time or anything else. I will tell you what it was. It was an attempt to get at the problem of what is the input-output ratio of enemy forces in Vietnam.

In other words, what you could do is take whatever figure we are using—you could have used 600,000 as well as some other figure. But

you can say "All right, at the end of this month we have so many enemy forces. During the past month so many were killed, so many were injured, so many defected; but they recruited so many and they brought so many down the trail."

If it turns out that they have had 2,000 less men input than they lost, that means the force must have been 2,000 men higher a month ago. You just go back in time that way. The reason they got this term "crossover point" was that it appeared that back in the spring or summer of 1966 was the point at which they were beginning to put fewer men into the force than they were losing. That was the crossover item.

Mr. HAYES. And were the figures not arrived at by use of the famous body counts, those daily published figures that we would always look at— $x$ -number killed here, killed there?

General GRAHAM. Yes; that was part of it. Part was body count; part was counting up the Chieu Hoi.

Mr. HAYES. Wasn't that a terribly subjective way to count? Wasn't it possible to manipulate the body count in order to keep the total crossover point figure at less than 300,000?

General GRAHAM. There was no crossover point figure at less than 300,000. You didn't understand what I told you. I said you could have started with 300,000; you could have started with 600,000 to do this analysis, and it wouldn't have made any difference. It has nothing to do with under 300,000.

Mr. HAYES. Exactly; it is the same misunderstanding I think that we have had through all of this counting exercise. It seems to me that you say, first of all, it has nothing to do with total enemy strength; the theory is put forth; the count is made; the input-output ratios are elucidated for us, and yet you say it has nothing to do with total enemy strength. It is like saying, "Let's do it and say we didn't," because in fact that is the way any reasonable man, I think, would interpret that.

General GRAHAM. I am afraid I am not getting through to you.

Mr. HAYES. You are getting through to me, General. I am being querulous.

General GRAHAM. Whatever point you started with was what we were looking at, and if you found—you know, if you had said, well, today we buy Sam Adams' 600,000. The same analysis would apply to 600,000 as it did to 299,000, and it wouldn't change that analysis a bit. You still go across the top of a curve somewhere back in history, and it doesn't make any difference where on the piece of graph paper you put your starting point.

Mr. HAYES. George Allen apparently was just as confused and mixed up as I am, then, because his comments on the MACV statistical summary were that he considers it to be a phony comparison between old figures and new, and that the guerrilla estimate was controlled by the desire to stay below a 300,000 level.

General GRAHAM. I don't know whether he said that or not, and if he did, he wasn't talking about anything that had to do with the crossover.

Mr. HAYES. How was this thesis accepted among policymakers after the Tet experience and we found out that the enemy was more than likely not in any kind of tailspin, so to speak?

General GRAHAM. Well, you may have found out that he wasn't in a tailspin after Tet; I found out that he was.

Mr. HAYES. How do you explain his May capabilities, then?

General GRAHAM. His May?

Mr. HAYES. Yes.

General GRAHAM. That May attack was a very feeble affair.

Mr. HAYES. It didn't amount to anything at all, then?

General GRAHAM. I didn't say it didn't amount to anything at all. It was a very feeble thing. It was nowhere near the effort put out in Tet.

Chairman PIKE. The time of the gentleman has expired. We have a quorum call on. I want to thank all of you gentlemen for being here this morning.

The committee will stand in recess until 2 o'clock this afternoon, When Mr. Colby and other witnesses will be here.

[Whereupon, at 12:05 p.m., the committee recessed until 2 o'clock this afternoon.]

#### AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

Mr. Colby, you are probably aware there have been certain conflicts in the testimony involving our intelligence prior to the Tet offensive in Vietnam. We are sure you will be able to resolve all of those conflicts for us this afternoon and we welcome you here. Please go right ahead.

**STATEMENT OF WILLIAM E. COLBY, DIRECTOR, CENTRAL INTELLIGENCE AGENCY; ACCOMPANIED BY PAUL V. WALSH, ASSOCIATE DEPUTY DIRECTOR FOR INTELLIGENCE; GEORGE CARVER, DEPUTY FOR NATIONAL INTELLIGENCE OFFICERS; MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE; AND GEORGE W. ALLEN, DIRECTOR, IMAGERY ANALYSIS SERVICE, CENTRAL INTELLIGENCE AGENCY**

Mr. COLBY. Mr. Chairman and members of the committee, I welcome this opportunity to appear before your committee and respond to the testimony presented to this committee by Mr. Samuel Adams on September 18.

Mr. Chairman, as you know, I have filed with the committee a lengthy statement which presents in some detail the Agency's response to the allegations made by Mr. Adams.

I would like at this time, however, to make a brief oral statement to the committee, speaking more specifically to some of those allegations.

#### THE CONSPIRACY CHARGE

In his public writings and in testimony before this committee, Mr. Adams has charged that CIA conspired with the Department of Defense to produce false and misleading estimates. Or, as he puts it, CIA participated in a coverup undertaken to produce estimates of Vietnamese Communist strength that would be politically acceptable.

I reject this charge as unfounded and unsupportable.

Let's take a look at the record. The record shows clearly that from 1965 onward CIA consistently advised the senior policymaking officials



of this Government that there was a strong likelihood that the official military estimates of the size of organized enemy groups in South Vietnam were understated. The CIA also presented its own independent estimates of the proper magnitude of these groups.

To start at the beginning, Mr. Adams' initial questioning of the correctness of the official estimates was done in his draft report dated August 22, 1966 on "The Strength of the Vietcong Irregulars." On August 26—just 4 days later—the CIA in a special assessment prepared for the Secretary of Defense and also sent to the President, the Secretary of State and other senior officials advised:

Recently acquired documentary evidence now being studied in detail suggests that our holdings on the numerical strength of these irregulars (now being carried at around 110,000) may require drastic upward revision.

Let me quote from other CIA documents.

On June 27, 1966:

If the reports are accurate, and past experience suggests that many of them are, the total number of North Vietnamese troops now in South Vietnam would be well over 50,000 men instead of approximately 38,000 as is now carried by MACV.

On November 22, 1966 in a memorandum to Robert W. Komer, Special Assistant to the President:

A reappraisal of the strength of Communist irregular forces which is currently underway indicates that accepted (that is, MACV) estimates of the strength of Vietcong irregular forces may have drastically understated their growth, possibly by as much as 200,000 persons.

The same message was conveyed in special reports prepared for the Secretary of Defense in December 1966 and in a January 1967 memorandum prepared by CIA's Board of National Estimates.

In May and June 1967, CIA reports to officials in the State and Defense Department contained our estimates that the size of organized Vietcong manpower was on the order of 500,000.

The May 1967 report—a special assessment prepared for Secretary McNamara—explicitly outlined our differences with each of the components in MACV's order of battle and concluded:

\* \* \* We believe the Vietcong paramilitary and political organization is still probably far larger than official U.S. order of battle statistics indicate. \* \* \* Thus, the overall strength of the Communists organized force structure in South Vietnam is probably in the 500,000 range and may even be higher.

The 500,000 figure presented by the CIA in this report could be compared with an official military number at that time of 292,000.

Mr. Chairman, I believe that these quotations from official CIA publications show clearly that the CIA did not shrink from pushing the case for higher figures and made no attempt to produce "politically acceptable" estimates.

#### THE ORDER OF BATTLE CONFERENCE IN SAIGON

Much of Mr. Adams' case seems to hinge on his charges that the CIA "sold out" or "caved in" at the order of battle conference held in Saigon in September 1967. A few observations about this conference are in order.

The final agreed figures resulting from the conference, particularly those for the VC/NVA combat forces, represented a significant move on the part of MACV, most notably regarding the category of administrative services or support groups.

In regard to the irregular forces, it is true that the conference agreed that they could be removed from the conventional order of battle. The significant point to note here is that even though they were not quantified, we had produced a national intelligence estimate, in which the military concurred, which acknowledged these irregular forces to be a very sizable factor in total enemy capabilities and one with which senior policy levels of this Government should be greatly concerned. To illustrate this point, I should like to quote from that estimate.

After noting that the VC/NVA military force is estimated as "at least 223,000-248,000" the estimate makes this key judgment:

It must be recognized, however, that this military force constitutes but one component of the total Communist organization. Any comprehensive judgment of Communist capabilities in South Vietnam must embrace the effectiveness of all the elements which comprise that organization, the total size of which is of course considerably greater than the figure given for the military force.

I don't suppose the results of the Saigon order of battle conference were completely acceptable to any of the parties. The military had a point in its argument that their concern was with the combat threat represented by the order of battle in the classic sense. CIA had a point, namely, that a responsible national intelligence assessment of enemy capabilities would have to include consideration of the much broader insurgency threat represented by all organized political, military and quasi-military groups.

Mr. Adams was never able to make or to appreciate this distinction. He always seemed, and apparently still seems, to persist in lumping all of these disparate groups together into a total number of 500,000 or whatever its size and to describe this aggregate as the enemy army. His persistence in this position is what led one observer to say of the September 1967 conference that it produced more heat than light.

Thus, I find it difficult to perceive the conference as the cover-up or sell-out claimed by Mr. Adams. CIA continued to maintain its independence on the question of enemy strengths. In an effort to make its judgments more effective and more persuasive, CIA created in August 1967 a new unit to concentrate more resources on the problem, particularly the more important question of the general adequacy of Vietnamese manpower resources and their ability to continue with the war.

It is true, as Mr. Adams states, that in December 1967 CIA prepared a special report for Secretary McNamara which used the numbers for military forces agreed at the Saigon conference and used in the estimate. We do try to live up to our agreements. Mr. Adams fails to point out, however, that in that same report CIA noted that the estimates for military forces did not include other sizable components (the self-defense or irregular forces) in the Communist structure. Mr. Adams also fails to note that by February 1968 CIA and DIA had produced a joint memorandum in which a CIA estimate of the size of a total insurgency base in South Vietnam of 500,000 persons was used. The joint staff concurred in this memorandum and General Wheeler sent it to the Secretary of Defense.

## THE TET OFFENSIVE

In his testimony regarding the performance of the intelligence community prior to the Tet offensive, Mr. Adams maintains that the intelligence community was caught by surprise by the Tet offensive and that this surprise was due to the fact that the community had so denigrated the size of the Vietcong that we simply could not have predicted the scope of the Tet attack. He then goes on to make rather sweeping claims that the losses of thousands of American lives and hundreds of military aircraft were due to the poor performance of the intelligence community.

I have already provided the committee with a copy of a post mortem done in 1968 by the intelligence community on its performance at the time of the Tet offensive. This report acknowledges quite frankly that warning of the Tet offensive had not fully anticipated the intensity, coordination and timing of the enemy attack. But the report found quite unequivocally that clear warnings regarding the imminence of an offensive—whether it would occur just before, or just after, or during Tet—were sufficient that the military command in Saigon, on the basis of these intelligence reports, was able to take alerting measures throughout the country.

I would submit that rather than being the cause of the loss of thousands of lives and hundreds of planes, the intelligence community provided the warnings that enabled the military commands in Vietnam to meet and to defeat the enemy forces during the Tet offensive and to minimize losses of lives and resources.

I would submit, moreover, that it was in large part due to these intelligence warnings that the Vietnamese Communists failed to attain their goal of a decisive victory for the Communist cause. The fact of the matter as we look back in history is that the Tet offensive was a calamitous setback for the Communist forces in 1968.

## THE 30,000 AGENTS

Mr. Adams makes much of his role in the production of a CIA estimate that the Vietcong had 30,000 agents in the South Vietnamese Government and Army. His testimony gives the impression that Agency work on this subject was almost exclusively an Adams' effort. He also makes the assertion that his estimate of 30,000 agents should be compared with an official estimate on the part of CIA's Directorate of Operations of only 300 agents. Finally, he asserts that the Agency attempted to suppress the report.

I should like to make a few comments on these statements:

First, I would observe that Mr. Adams' testimony about his famous estimate of 30,000 agents reflects his well-known tendency to make sweeping and unqualified generalizations. Mr. Adams fails to note or to inform his audience that the text of a CIA report he drafted made it quite clear that the total numbers presented were to be viewed only as "a broad order of magnitude." The basic question that had to be answered was, "What is an agent?" Even by Mr. Adams' own description of the network of agents, when he separated "fencesitters" or people with varying degrees of sympathy for the Communist cause, his estimate of hardcore effective agents amounted to only some 10 percent of the total, that is, 3,000 rather than 30,000.

Mr. Adams was the principal analyst in the Intelligence Directorate working on this problem. The effort to publish finished intelligence on this subject was modest, but it was consistent with the availability of the data to be exploited. More to the point, other parts of the Agency were more directly concerned with the question of Communist subversion. During the same period in which Mr. Adams was doing his work, our station in Saigon had 14 people assigned to this activity. They were backstopped by a five-person team in CIA headquarters.

The 30,000 against 300 score that Mr. Adams recounts is wrong. The fact is that the Agency estimate of 30,000 was a fully coordinated report which had been concurred in by all parts of the Agency, even that part which Mr. Adams claims to have identified only 300 agents.

In regard to suppression of the report, I can only state most forcefully that there was no suppression of the report. The fact of the matter is that it took Mr. Adams well over 18 months from the initiation of his report to the completion of a draft that would meet minimum Agency standards regarding the organization of reports, the quality of their writing, and the consistency and the soundness of the analysis and evidence used in making the judgments presented in the report.

#### OTHER ASPECTS

Mr. Chairman, I would like to speak very briefly to two other points made by Mr. Adams in his testimony. Mr. Adams' testimony gives the impression that he was the only analyst in CIA working on the Vietcong and that for a period of almost 2 years he was the only analyst working full-time on the problem.

During the years when Mr. Adams was most directly engaged in making his case for higher figures, the intelligence community relied on the Department of Defense, which had the primary responsibility for order of battle numbers. Therefore, I do not find it surprising that only one analyst in CIA headquarters was working full-time in exploiting captured documents for information on some very specific aspects of this question.

I would like the record to show also that during the 1965-68 period, when Mr. Adams gives the impression he was going it alone, the number of production analysts working on the Vietnam problem grew from 15 analysts in 1965 to 69 analysts in 1968. I believe that Mr. Adams' testimony on this point and on the significance of his contribution to the intelligence production effort shows a surprisingly dim awareness on his part of his own relative position in CIA and of the broad range of Vietnam war-related activities on which CIA was conducting research and analysis.

Finally, in his testimony Mr. Adams dramatizes his drafting of a memorandum of resignation from the Office of the Director on January 30, 1968, the day of the Tet offensive. In reviewing the record, I found that Mr. Adams did write such a memorandum, but I also found that his transfer from the Office of the Director had been negotiated almost 2 months before the Tet offensive and that he had been in his new CIA assignment a full week before the offensive. This chain of events and the timing of his memorandum raises questions in my mind as to his motives for writing the memorandum.

## GENERAL OBSERVATIONS

Mr. Chairman, I believe that my remarks regarding the testimony of Mr. Adams make it clear that his charges against CIA are plainly and simply wrong. I see little profit in engaging in further argument and recrimination about the Vietnam war. On the whole, I am satisfied that the record of CIA in the Vietnam war is one in which we can all take great pride. There are, however, several observations that come to mind as a result of my study of Mr. Adams' statement and my personal review of the performance of CIA.

First, I would observe that our experience in estimating enemy strengths in South Vietnam is a classic example of many of the intangibles with which intelligence officers must wrestle in their day-to-day job.

Working from incomplete and often conflicting data, the job of intelligence on this subject was also beset with additional and complex methodological and judgmental factors. These ranged from fundamental conceptual differences on the threat to be measured, to the choice of the proper methods for extrapolating uncertain and fragmentary data. Even if agreements could be reached on the groups to be included, there were problems in deciding on how to measure their strengths, their attrition, or their success in replacing manpower losses. Even if all of the definitional and quantitative factors could be resolved, there were any number of judgmental calls to be made on the qualitative aspects of these forces.

In short, the problem of estimating the numerical strength of many disparate groups of organized manpower, particularly in the context of the Vietnam war, was of necessity a highly imprecise art. Even to this day I doubt that there are experienced observers—in Washington or in Hanoi—who would lay claim to having precise knowledge of the numerical strengths of most of the organized groups in South Vietnam on either side.

The problem for intelligence analysts was further complicated during the Vietnam war by the national obsession for trying to measure the course of the war in numerical terms. As I look back over the past 10 years, I view this infatuation with numbers as one of the more trying experiences the intelligence community has had to endure. In the minds of many, the penchant for numbers created pressures which made a task that was at best difficult almost impossible to achieve.

Numbers were useful during the war to those of us fighting it, but we had no illusions as to their absolute precision. I personally am less concerned with who had the better numbers than I am with the more fundamental question—did the CIA do its job?

My answer to this question is a resounding affirmative. The CIA did not attempt to sweep number under the rug. When it was necessary, the CIA raised questions, debated the issues, and provided its own independent assessments without regard to how they would be received. On some issues, we did exceedingly well; on others, we probably could have done better.

Whatever the merits of the argument, my concern is that the members of the executive branch, the Congress, and, indeed, the American public can feel assured of one fact:

The CIA is doing its job. Its analysts are calling the shots as they see them. They do this as professionals in the intelligence business, and not to agree or disagree with the desires of policymakers.

Thank you, Mr. Chairman.

[Mr. Colby's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM E. COLBY, DIRECTOR, CENTRAL  
INTELLIGENCE AGENCY

STATEMENT ON SAMUEL A. ADAMS

In testimony before the House Select Committee and elsewhere, former CIA employee Samuel A. Adams has charged that:

The CIA conspired in some unspecified way with the Department of Defense to produce false and misleading, but politically acceptable, estimates of Vietnamese Communist strength.

The Vietcong Tet offensive in 1968 caught the American intelligence community largely by surprise. He claims, " \* \* \* the Tet surprise stemmed in large measure from corruption in the intelligence process."

The CIA denies these charges and believes that an examination of its performance during the Vietnam war will not substantiate them. The record shows clearly that Mr. Adams' views on the size and nature of the various organized Communist groups in South Vietnam were in fact supported by CIA. The record also shows that his comments on the extent to which the intelligence community was caught by surprise by the Tet offensive in January 1968, and the conclusions he draws therefrom, are wrong.

In considering the question of Agency support for Mr. Adams' views, several points should be kept in mind. The Agency's general endorsement of the Adams case was not unqualified. Few, if any, in the Agency believed that Mr. Adams' estimates could be accorded such a high degree of precision as to preclude honest differences regarding their accuracy and the methodologies used to derive them. Even to this date, there is considerable uncertainty about the exact numerical strength of the various Communist groups during any of the war years.

The endorsement of the Adams case also did not mean that the Agency shared fully his interpretation of the significance of the numbers. In his testimony before the House select committee and in other public statements on the subject, Mr. Adams frequently refers simplistically to an enemy army of 600,000. This formulation masks the substantial qualitative differences between full-time, well-armed and well-trained combat forces on the one hand and poorly armed and poorly trained irregular forces and unarmed political cadre on the other. Lumping all of these disparate types together and failing to differentiate between a "combat threat" and the broader "insurgency threat" represented by all organized political, military, and quasi-military groups was as unacceptable to most observers in the CIA as it was to those in military intelligence.

Under the first charge Mr. Adams asserts that the CIA did not give him adequate support in defending his independent estimates of the size of the enemy forces in South Vietnam. Even though the primary responsibility for research and analysis of the Vietnamese Communist order of battle belonged to the Department of Defense and its field commands, the record shows clearly that Mr. Adams was given an unprecedented degree of Agency support for his position.

By his own recounting, Mr. Adams had unparalleled opportunities to present his views. They were given full consideration by the senior line officers in the Agency responsible for intelligence on the Vietnam war. He participated as a member of the CIA delegation to three conferences on the Vietnamese Communist order of battle. Mr. Adams also had a major role in the drafting of CIA position papers for these conferences and in the drafting during 1967 of a Special National Intelligence Estimate on the military capabilities of the Vietnamese Communists.

The record also demonstrates clearly that the most senior officials of the U.S. Government were alerted by CIA to the nature of the differences in estimates of Communist manpower. On several occasions the Agency provided to these officials its own independent estimates which reflected much of Mr. Adams' research and were significantly higher than those of the intelligence components of the Department of Defense. Some of these documents, or extracts from them, are attached as annexes to this statement.

As Mr. Adams has testified, his initial questioning of the correctness of official estimates of the size of enemy forces was made in August 1966. This was done in a draft report, "The Strength of the Vietcong Irregulars," dated August 22, 1966. On August 26, the CIA, in a special assessment prepared for the Secretary of Defense and also disseminated to the President, the Secretary of State, and other senior officials, advised:

"Recently acquired documentary evidence now being studied in detail suggests that our holdings on the numerical strength of these irregulars (now being carried at around 110,000) may require drastic upward revision."

In January 1967 CIA's Board of National Estimates prepared a special memorandum on the Vietnam war which was disseminated to the Secretary of Defense, the Secretary of State, and other senior officials. This memorandum states:

"For some years it has been estimated that there were about 100,000-120,000 irregulars, but there is now documentary evidence which strongly suggests that at the beginning of 1965 irregular strength was about 200,000 and that the goal for the end of 1965 was 250,000-300,000. More recent documentary evidence suggests that this goal was probably reached, at least during 1966."

Clearly, these and other assessments show that the CIA did not shrink from pushing the case for higher figures and made no attempt to produce "politically acceptable" estimates. From August 1966, until the agreement reached at the order of battle conference in Saigon in September 1967, papers produced by the Agency giving its independent assessment consistently carried the higher strength figures.

#### THE ORDER OF BATTLE ISSUE

The debates within the intelligence community about the strength of Communist forces centered on two questions—the quantification of the various organized groups of Communist manpower, and the determination of which of these groups should be included in the official order of battle.

The complexity of the issue is reflected in Mr. Adams' own estimates throughout the period. In December 1966, by his own recounting, he estimated the size of enemy forces at 600,000 or more than twice that of the official military estimates. After a study trip to Vietnam in May of 1967, Mr. Adams revised his estimates downward to a total of 500,000. This figure of 500,000 was used in the initial CIA draft of a Special National Intelligence Estimate prepared in the spring and summer of 1967.

During the process of coordinating this draft estimate, the figures were revised slightly and by August of 1967 the draft estimate showed a total figure for enemy manpower of 431,000 to 491,000. Mr. Adams played a major role in the refinement of these figures which were used by the Washington delegation to the order of battle conference held in Saigon in September 1967. Mr. Adams was a member of that delegation and argued for the figures in the discussions with MACV. As shown in the attached table, the Washington figure of 431,000 to 491,000 compared with a MACV figure of 298,000.

It will be seen from the table that the two most contentious categories were administrative services (support) troops and the category of the irregular forces. In each instance, neither party to the conference was able to convince the other of the validity of its case.

Regarding the administrative services category, it was agreed that the quantification—35,000 to 40,000—required textual qualification in the estimate. The final draft of the SNIE acknowledged explicitly that we lacked confidence in the total size of this category at any given time, but that it was "at least 35,000 to 40,000." In addition the SNIE pointed out that almost anyone under VC control could be impressed into service to perform the administrative service functions.

The conference was unable to reach agreement on the size of the irregular forces. MACV argued that these forces should not be included in a military order of battle and that in any event there was not sufficient knowledge to quantify them. The Washington delegation agreed that the irregular forces were so poorly armed and sketchily trained that they did not constitute an integral part of the conventional combat threat. The Washington team nevertheless insisted that irregular forces should be included in any national intelligence assessments of overall enemy capabilities, both political and military.

The conference agreement not to quantify the irregular forces also reflected the general acknowledgment that our information on these forces was such that we could not estimate their size with sufficient confidence. Mr. Adams did not agree with this. The SNIE made it clear, however, that these irregular forces

were a substantial factor in Vietnam. The SNIE stated that in early 1966 the size of the irregulars could have been on the order of 150,000 persons. Although allowing for some attrition, the language of the estimate made it clear that they still constituted a substantial element in the Communist effort.

In regard to the other categories, particularly those making up the VC/NVA military force, it should be noted that the final figures agreed at the conference and those used in the final draft of the SNIE were well within the range of the figures used to establish the position of the Washington community on this question. Moreover, the agreed figures for these categories also show an acceptance by MACV of a range significantly higher than the estimate it had submitted at the conference.

Thus, the agreements reached at Saigon were far from the cover-up or sell-out claimed by Mr. Adams. The results of the conference did not endorse the initial position of any party. They reflected the lack of definitive data, different methodologies, and different concepts as to the types of organized groups and how they should be presented in the SNIE. In any event the different views were fully aired and were made widely known to all concerned with developments in Indochina.

The Saigon conference did demonstrate the need for better data and for more persuasive analysis by the various components of the intelligence community if differences between Washington and MACV were to be narrowed. An added impetus to the need for more research on Vietnamese Communist manpower was the growing interest in Washington in measuring the impact on enemy capabilities of extremely high rates of attrition. The debate about numbers and their accuracy was being overshadowed by a much more critical national intelligence question. Did the Vietnamese Communists have adequate manpower resources to replace their combat losses and to maintain a viable military force?

In August 1967 CIA established a new branch to concentrate more resources on this problem. In addition to mounting a more intensive research program on broader manpower questions such as recruitment, infiltration, deserters and defectors, the CIA now became directly involved in independent order of battle research and analysis. Before this time, order of battle analysis was the primary responsibility of military intelligence. Among the analysts assigned to the task was Mr. Adams who, with his colleagues, produced within a few months a new series of estimates as the basis for another order of battle conference called at CIA initiative and held in Washington in April 1968.

This conference also failed to achieve agreement between Washington and Saigon for many of the same reasons which prevented agreement during the conference held in September 1967. The conference did, however, narrow the differences between the CIA and the military numbers.

Even though CIA was unable to obtain military acceptance of its estimates of organized Communist forces in South Vietnam, CIA did not attempt to mask the fact that there were differences or to keep from the policymakers an understanding of the magnitude and nature of the differences. The CIA continued to make its case for higher figures. A CIA assessment prepared for Secretary of Defense McNamara in December 1967, for example, used the numbers agreed at the order of battle conference held in Saigon, but also expressed our concern that the numbers were too low and did not include other sizable components in the Communist force structure. Moreover, in February 1968 a joint CIA/Joint Staff/DIA memorandum used the independent CIA estimates for the size of the Communist manpower base in South Vietnam. This estimate—500,000—was compatible with the views of Mr. Adams. The memorandum was transmitted to the Secretary of Defense by the Chairman, Joint Chiefs of Staff.

#### THE TET SURPRISE

In making his charges regarding the surprise of the Washington community at the time of the Tet offensive, Mr. Adams states that his surprise stemmed from corruption in the intelligence process. He also stated that both his belief and the evidence would show " \* \* \* that American intelligence had so denigrated the Vietcong's capabilities that we simply could not have predicted the size of the Tet attack."

The question of the performance of the intelligence community in providing warning of the Tet offensive in South Vietnam in January 1968 was the subject of intensive investigations within the intelligence community. The report result-



ing from these investigations has been made available to the House select committee.

In 1968, shortly after the Tet offensive, at the request of the President's Foreign Intelligence Advisory Board, CIA Director Helms appointed a working group chaired by his Deputy Director for Intelligence and including representatives from CIA, DIA, INR, NSA, and the Joint Staff. This group examined the raw intelligence information received and the intelligence summaries and judgments reported on in the period immediately prior to the Tet offensive and also visited Vietnam to be joined there by observers from CINCPAC, MACV, and the CIA Station in Saigon.

The working group found that the intelligence community—both in Washington and in Saigon—had reported that the enemy was preparing for a series of coordinated attacks probably on a larger scale than ever before. The final results of this group's investigations acknowledged that warning of the Tet offensive had not fully anticipated the intensity, coordination, and timing of the enemy attack.

On the question of timing, the working group found that both the analysts in Washington and the field commanders in Saigon believed that the enemy would most probably attack just before or just after the Tet holiday. Nevertheless, the clear warnings regarding the imminence of an offensive—whether it would occur just before, just after, or during Tet—were sufficient for the military command in Saigon to take alerting measures throughout Vietnam. Although these measures varied in effectiveness from area to area and among units, they were sufficient to reduce considerably the impact of the enemy offensive.

If the intelligence community's performance in warning of the offensive was as dismal as Mr. Adams maintains, the loss of American lives and military equipment would have been significantly greater than actually occurred. Moreover, the fact that intelligence provided this warning was not an insignificant factor in the failure of the Vietnamese Communists to attain their goal of a general uprising that would result in a decisive victory in the shortest possible time.

In Mr. Adams' view the intelligence community did not provide ample warning of the Tet offensive simply because its estimates of enemy manpower were so low that they led the community to misjudge the Vietcong's capability to mount such widespread attacks. This argument is largely spurious. Throughout the intelligence community and at the highest policymaking circles of this Government, there was an awareness of substantial differences in estimates of enemy strength in South Vietnam and there was also an awareness that the CIA estimates of the total enemy threat were considerably higher than those maintained by MACV. Even if the only estimates of enemy strength were those of MACV—the lowest available—they were well within the numbers required for the Vietcong to mount the Tet offensive. Studies made after the Tet offensive both by CIA and other members of the intelligence community showed that the Communists committed some 75,000 to 85,000 of their military forces in the Tet offensive. The capability to commit this many troops was well within existing estimates. This was true whether one's perception of the strength of the VC/NVA military force was based on the lower figures held by MACV or the higher figures held by CIA. There was also a universal consensus that, whatever their number, the attacking enemy units were almost without exception those of the VC/NVA regular military forces. The role of the irregular forces—the main component accounting for Mr. Adams' larger estimates—was seen to be marginal.

#### ANALYTICAL EFFORT ON THE VIETNAM WAR

In addition to the broad allegations discussed above, Mr. Adams' testimony gives a distorted impression of the scope of the analytical effort on the Vietnam war. In addition to claiming that he was the Agency's principal analyst on the Vietcong, he makes a further assertion that for 2 years he was the only analyst working full time on the problem.

Mr. Adams' testimony on this point reflects a surprisingly dim awareness of his own relative position in CIA and of the broad range of Vietnam war related activities on which CIA was conducting research and analysis.

In CIA, two components of the Directorate of Intelligence—the Office of Current Intelligence (OCI) and the Office of Economic Research (OER)—shared the primary responsibilities for producing intelligence on the Vietnam war. During the years 1965–68 when Mr. Adams was most directly engaged in making his case for higher figures, the number of personnel in these offices working full

time on the Vietnamese war grew from 15 analysts in 1965 to 69 analysts in 1968. In addition CIA's Office of National Estimates had a small staff responsible for integrating community inputs into National Intelligence Estimates or special assessments related to the Vietnam war. The DCI's Special Assistant for Vietnamese Affairs also maintained a large staff responsible for coordinating the Agency's analytical and operational activities associated with the war.

Numbers aside, Mr. Adams' testimony might have been more accurate if he had stated that he was the only person in CIA working essentially full time on the exploitation of captured documents specifically for information on the size and structure of Vietnamese Communist military organizations. As noted before, the Department of Defense and its field commands had the primary responsibility for estimates of these military intelligence matters.

At the same time Mr. Adams was exploiting these documents for his narrowly defined purposes, they were also studied and analyzed by the dozens of analysts reporting on a wide range of activities. These included political and military developments throughout Indochina; detailed studies of the Communists' logistic and personnel infiltration systems; and analyses of the effects of the bombing; reporting and analysis of Vietnamese manpower resources; and a variety of topics related to domestic economic, and foreign trade relationships.

In sum, the responsibilities of the intelligence analysts in CIA during the course of the Vietnam war were far-ranging and demanding. In this context, and given the fact that responsibility for detailed order of battle analysis was not that of the CIA, it cannot be viewed as surprising that only one analyst was assigned a related responsibility on a full-time basis. As stated previously, when the question of Vietnamese Communist manpower acquired a truly substantive significance in terms of assessing Vietnamese ability to continue with the war in view of the high loss rates they sustained, the CIA created a special unit of eight analysts to work on all aspects of Vietnamese manpower, including order of battle.

#### THE 30,000 AGENTS

Mr. Adams makes several references in his testimony before the House select committee to his role in 1970 in producing a CIA memorandum reporting that the Vietcong had 30,000 agents in the South Vietnamese Government and Army. His testimony gives the impression that Agency work on this subject was almost exclusively an Adams effort, and, further, that the Agency attempted to suppress the report.

Public discussion of the Agency estimate that there were 30,000 Vietcong agents is not novel. The substance of the initial memorandum reporting these numbers leaked to the New York Times shortly after its publication in 1970. Mr. Adams also discussed this estimate and his role in its production with the press when he resigned from the Agency in 1973. The subject was also treated in the Adams' article published by Harper's magazine in May 1975.

Mr. Adams' discussion of this topic reflects some of the same kinds of deficiencies apparent in his recounting of his role in estimating enemy strengths. The most notable of these are his tendency to claim almost exclusive personal credit and his penchant for reaching highly simplistic judgments and conclusions.

Mr. Adams was not as he claims " \* \* \* the first person ever to attempt to count spies or even to estimate the size of the problem." The effort to publish finished intelligence on this subject was admittedly modest but consistent with the availability of the data to be exploited. The question of Communist subversion was of more concern in the operational components of the Agency. During the 1969-70 period the CIA Station in Saigon had 14 personnel assigned to counter-intelligence activities. This field effort was backstopped by a five-person team in CIA Headquarters who spent full time providing analytical and other support to Saigon Station's counterintelligence program.

In describing the 30,000 agents as " \* \* \* the biggest espionage network in the history of mankind," Mr. Adams again shows his tendency to make sweeping generalizations. In the official Agency publications regarding these estimates, for example, the text makes it quite clear that the total number must be viewed only as a broad order of magnitude. The basic question was, "What is an agent?" Most of the people included in the Adams estimate were not highly trained and dedicated agents.

In a country torn apart for years by revolution and war, it was inevitable that divided loyalties would result from divergent nationalistic, ideological and familial factors. Thus, the bulk of the 30,000 agents were in fact "fence-sitters"

or people with varying degrees of sympathy for the Communist cause. By Mr. Adams' own analysis, the number of hard core agents amounted to some 10 percent of his estimate.

Mr. Adams testifies that he had to go outside channels to get a draft of this estimate to consumers in the White House. Mr. Adams fails to report that 18 months transpired from his initiation of the report to its completion. This time was required for the completion of several drafts in an attempt to get a product from Mr. Adams that would meet minimum Agency standards regarding not only the organization of reports and the quality of the writing in them, but more importantly the consistency and soundness of the analysis and the evidence for making the judgments presented in the report.

#### THE COLLAPSE OF SOUTH VIETNAM

Admitting that he was testifying only from hearsay, Mr. Adams, nevertheless, probably gave the House select committee the impression that the collapse of the South Vietnamese Government in 1975 took the intelligence community by surprise.

If this impression were left with the committee, it needs to be corrected. A thorough review of U.S. intelligence analysis in the 6 months preceding the collapse of the Saigon Government shows that it acquitted itself very well.

In terms of its primary predictive responsibility—the intentions and capabilities of the North Vietnamese—American intelligence made a continuous, voluminous and high quality input to U.S. policymakers. The intelligence community correctly estimated that Communist forces in South Vietnam were more powerful than ever before and predicted a marked increase in military action in the first half of 1975.

The intelligence community also predicted correctly that Hanoi was not planning an all-out offensive for the first half of 1975, but would be quick to go on the offensive if a major opportunity arose. The validity of this last assessment has since been confirmed by statements of North Vietnamese leaders.

The intelligence community could not perceive that the major opportunity would be the hasty, ill-planned, and poorly executed decision made by President Thieu on March 13, 1975 to withdraw his forces from large parts of South Vietnam. But once this decision was made, the intelligence community was quick to grasp the consequences of its faulty implementation. On March 17, the community predicted Hanoi's likely moves to exploit South Vietnam's new vulnerability and clearly identified the factors which could lead to South Vietnam's unraveling. The community's first authoritative judgment that Saigon's collapse was both inevitable and imminent was made by April 3, 1975.

#### THE 1967 SAIGON ORDER OF BATTLE CONFERENCE ESTIMATED STRENGTH OF COMMUNIST FORCES IN SOUTH VIETNAM

Category	August draft SNIE 14.3/67	MACV	Conference agreement	Final SNIE 14.3/67
<b>VC/NVA military force:</b>				
Main and local forces.....	121,000	119,000	119,000	118,000
Administrative services (support).....	40,000-60,000	29,000	35,000-40,000	35,000-40,000
Guerrillas.....	60,000-100,000	65,000	70,000-90,000	70,000-90,000
Subtotal.....	221,000-281,000	213,000	224,000-249,000	223,000-248,000
<b>Other organizations:</b>				
Political cadre.....	90,000	85,000	75,000-85,000	75,000-85,000
Irregulars (self-defense forces) (secret self-defense forces) (assault youth).....	120,000		(1)	(2)
Total.....	431,000-491,000	298,000	299,000-334,000	298,000-333,000

<sup>1</sup> To be qualified in the text of SNIE 14.3/67.

Chairman PIKE. Thank you, Mr. Colby.

On the first page of your statement you say the record shows clearly that from 1965 onward, the CIA consistently advised the senior policy-making officials of this Government that there was a strong likelihood

that the official military estimates of the size of organized enemy groups in South Vietnam were understated.

How many of those senior policymaking officials, if any, were in the Congress?

Mr. COLBY. I think we only had one specific account. This was a briefing given by the Director, Mr. Helms, to the House Armed Services Special Committee on National Defense Posture on the 9th of October 1967. This particular briefing points out the Communists have a largely untrained irregular force called a militia which may have numbered about 150,000 in 1966.

This was the figure that went over the other totals that were there. Whether or not there were others, our immediate search doesn't show.

Chairman PIKE. With the exception of that one briefing to one subcommittee of the House Armed Services Committee—which I assume was classified—you have no record that Congress was ever advised as to the likelihood that the figures should be higher?

Mr. COLBY. I can't put my finger on any such report, Mr. Chairman. There may have been, but I cannot cite it specifically at this point.

Chairman PIKE. In your view of the role of CIA, does it have any responsibility to tell Congress, as well as to tell the executive branch?

Mr. COLBY. I believe, Mr. Chairman, the practice, particularly at that time—and it is very much expanded since that time—was for the CIA to be responsive to requests from Congress for briefings. This occurs through various committees of the Congress—not just to the oversight committees. But there would be an annual briefing given on the strategic posture and things of this nature.

I think in recent years, Mr. Chairman, there was a great amount of this that went on and we have taken steps to insure that our intelligence assessments do go to Congress.

Chairman PIKE. I sat on the House Armed Services Committee during those years and I don't think I ever got any briefing like that. I was not on that particular subcommittee.

I am somewhat fascinated with the bland assertion that the CIA was telling these senior policymaking officials of the Government that these figures were too low. I assert to you, sir, that Congress was being fed the phony figures—the low figures.

You may have been telling the executive branch what the true figures were, but you were not telling Congress and, in my judgment, the American people did not have the slightest idea. I would welcome your response.

Mr. COLBY. I think, Mr. Chairman, at that time the tradition was that the CIA reported to the executive branch and only incidentally and on request went to Congress. I think that has changed over these past years and there is considerably greater reporting to Congress now than there was.

Chairman PIKE. Would you agree with me that what Congress was getting were the low military figures which in essence the CIA felt were wrong?

Mr. COLBY. I can't categorize what Congress was being given but I would say if the Congress was briefed according to the special national estimate put together in the fall of 1967, it would have clearly drawn the distinction between the regular forces—with the number

estimated for the regular forces—by the clear statement in the estimate that there is an additional category of irregular, unquantifiable forces, which has to be considered as part of the total picture.

Chairman PIKE. That is a very loose and very bland assertion. I recognize that you can't precisely quantify regular forces, let alone irregular forces. But when your statement says these top officials of the Government were getting this information and then, when pinned down, we find that only one subcommittee of the House Armed Services Committee got the information, I do find that you have overstated your case.

Mr. COLBY. I think what you are saying there is that the senior policymaking officials to whom intelligence was reported in the 1960's were generally accepted as including the executive branch, and we did so report to the executive branch. I think that has changed in the past few years.

Chairman PIKE. I hope so, but I am not sure.

Mr. McClory.

Mr. McCLORY. I would like to observe that the CIA has been in existence 27 years and now for the first time the Congress is asserting an important oversight role. Up to the present time, the Congress has not initiated any investigation of the CIA or insisted upon any oversight such as we are in the process of at the present time.

Mr. COLBY. I can certainly testify to that, Mr. McClory.

Mr. McCLORY. I think it is a major responsibility of the Congress that we assume responsibility for this lack of oversight and not say to the CIA and other intelligence agencies, "Why didn't you volunteer? Why didn't you develop a program for the Congress to adopt so the Congress—all the Members, or some committees of the Congress—could review or oversee what you are doing?"

I think that would be an unreal demand to place upon an executive agency, particularly one charged with secrecy such as the CIA.

I find in your testimony and in the materials that I have read, that as far as the CIA is concerned, you were reporting the facts as you found them and as you analyzed them, and you felt—that these facts were required—this information was required—without considering what effect it would have if it appeared in the press or if it were broadcast to the public. Isn't that essentially right?

Mr. COLBY. Well, Mr. McClory, we used to divide the kind of reporting to Congress in two categories.

Mr. McCLORY. I am talking about your reporting to the executive branch—to the military, to the White House.

Mr. COLBY. On reporting to the executive branch, we reported also in the same two categories. One, about our operational activities; there has been traditionally a very small number of people to whom this has been reported.

Mr. McCLORY. I am thinking about the numbers, now, with regard to Tet. You reported the facts, as you found them, to the military and to the White House, did you not?

Mr. COLBY. Oh, yes. Our reports are circulated within the executive branch. They went to the Secretary of Defense, the Secretary of State and people like that.

Mr. McCLODY. These reports that indicated we have to be careful about the higher numbers because of the press reaction or what might be the public attitude with regard to the war in Vietnam were not originated in the CIA?

Mr. COLBY. No; those statements, I gather, came from elsewhere.

Mr. McCLODY. You are aware, I am sure, that in a guerrilla-type war you need superior numbers. You need I don't know how many times as many military elements to combat a much smaller guerrilla component. Therefore, the question of numbers would have quite an effect on how many men—how much personnel—the United States would have to put into the Vietnam war, is that not right?

Mr. COLBY. I believe the effort to develop a number with respect to the enemy strength was a part of the advising of our Government as to the amount of effort we would have to spend to counter that kind of effort by the Vietcong. I don't think there is a numerical formula.

Mr. McCLODY. You have heard that you have to have 10 times the number of guerrilla personnel, or some figure like that, have you not?

Mr. COLBY. I have heard that referred to. I think the fighting of a guerrilla war is fundamentally a political operation, Mr. McCLODY, and I have had quite a lot of experience in it. Without a political content on either side, you cannot succeed in a guerrilla war.

Mr. PIKE. Mr. Dellums.

Mr. DELLUMS. Obviously, Mr. Adams' testimony is conceived by some to be very controversial testimony. It seems when you filter through all of Mr. Adams' statements he makes but two points: No. 1, MACV figures were low, and No. 2, MACV figures were low in comparison to a higher set of figures that the CIA tends to agree with.

Is it not true that (1) you agree that MACV figures are low or wrong, and (2) you agree that, in comparison to CIA figures, MACV figures were wrong. In effect, you agree on the two basic points Mr. Adams makes and the only point you really disagree with Mr. Adams on is the issue of motive?

Mr. COLBY. I don't believe that, Mr. Dellums. I disagree with Mr. Adams on a more fundamental question. We did not substantially disagree with the military on the figures for the combat forces. There were minor variations but we essentially agreed on the combat forces.

Mr. DELLUMS. Doesn't Mr. Adams also say that?

Mr. COLBY. He agreed that number was correct. The argument between the military and us and Mr. Adams came out in three different places. The argument was that Mr. Adams said that you could quantify the additional forces. The military said you could not. The CIA said it was very difficult to come to any quantification and all you could do was refer to them in very general terms. We came out somewhere between the two. I believe that is where the CIA came out, with respect to the irregular forces.

Mr. DELLUMS. Did you bring to Secretary McNamara's attention the military's underestimates, and, if so, why?

Mr. COLBY. We reported to Secretary McNamara our assessments and they obviously did conflict with the statements made in the other reports; but again they could be resolved by this question of exactly what are your numbers and what is your report covering. Is it cov-

ering only combat forces or is it covering the whole insurgency problem that we faced?

Mr. DELLUMS. Mr. Allen, you analyzed the Vietcong order of battle estimates from 1962 on. You were in Vietnam in 1952. You worked on Vietnam since 1952.

From your experience, did DIA put forward incorrect estimates of Vietcong strength?

Mr. ALLEN. There were always disagreements in the community between the various agencies. I wouldn't characterize DIA estimates as erroneous, but generally speaking, they tended to be on the lower side as compared with those of the CIA.

Mr. DELLUMS. Let me ask the question this way: Were the DIA estimates supported by evidence? And a caveat to that would be, if there is a difference, what was the order of magnitude of the difference?

Mr. ALLEN. Those differences varied from time to time over the years.

Mr. DELLUMS. Were the estimates supported by evidence?

Mr. ALLEN. There was evidence to support anyone's estimates. Part of the problem was the relative weight to be given to the different varieties of evidence and there were methodological differences—different agencies using different methodologies to arrive at their assessments.

Mr. DELLUMS. Let me ask a very naive and obvious question: Did you ever attempt to reconcile the differences? The American people believed this was a coordinated, highly sophisticated mechanism and obviously it isn't, if various agencies use different approaches. How do you reconcile the differences?

Mr. ALLEN. There is within the community a variety of mechanisms. These were accomplished more or less annually with regard to the estimative process, which involved all the components in the intelligence community attempting to arrive at agreed upon numbers for presentation in these agreed upon national intelligence estimates.

It is one of these estimates which gave rise to the problems which Mr. Adams brought forth.

Mr. DELLUMS. Were military analysts under any pressure to slant their figures?

Mr. ALLEN. That is a difficult question to answer.

Mr. DELLUMS. Did DIA play numbers games in Vietnam?

Mr. ALLEN. I left DIA in 1963 and I am not familiar with the procedures they used or the pressures they were under after 1963.

Mr. DELLUMS. Let me ask for your judgment: How would you characterize the MACV figures?

Mr. ALLEN. Generally speaking, I felt that they were relatively conservative and, as Mr. Colby stated in his remarks, tended to understate the enemy's strength.

Mr. DELLUMS. I see that my time has expired.

Chairman PIKE. Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. Colby, Mr. Adams, when testifying before our committee on the 18th of September, quoted from certain cables—a cable from General Abrams to General Wheeler in 1967 and another one from Ambassador Bunker.

Do you know how Mr. Adams obtained these cables?

Mr. COLBY. Offhand I don't know. I think certain of these we had in our headquarters, and certain others, I believe, we did not have in our headquarters, so I can't give the answer to that.

Mr. TREEN. Is it correct that they were classified as of September 18 and had not been declassified?

Mr. COLBY. They were classified at that time.

Mr. TREEN. On the 18th of September?

Mr. COLBY. I know of no declassification of them.

Mr. TREEN. Have they been declassified yet? I think you did this week.

Mr. COLBY. The one from General Abrams, I am advised, has been declassified.

Mr. WALSH. We have never been able to find the Bunker cable.

Mr. TREEN. You have never been able to find the cable?

Mr. WALSH. Right, sir.

Mr. CARVER. We are not sure the Agency ever received it. We have no record.

Mr. TREEN. All right.

Let me go over, Mr. Colby, if I may, please, some of the figures here. I guess some of us are getting tired of going over numbers, but the fact of the matter is that the numbers issue—which was in the title of Mr. Adams' article in Harpers—lies at the heart of his thrust which is, as he testified here on September 18, that the total of Communist forces in Vietnam, then officially carried at just under 300,000 was more than likely double, or close to 600,000.

And second, this miscalculation—actually, as he called it, distortion, deliberation distortion—had an adverse effect at the time of the Tet offensive in early 1968.

And third, he was unable to get any hearing on his views within the CIA.

Let me go over the first item with respect to numbers. I gather, before getting into the specifics, that the situation essentially was that CIA disputed in 1966 and early 1967 some of the figures of the command in Vietnam—the military command.

Mr. COLBY. As not being inclusive enough. There were additional forces that needed to be included.

Mr. TREEN. All right. On page 2 you quote a communication in 1966 that: "Recently acquired documentary evidence, now being studied in detail, suggests that our holdings on the numerical strength of these irregulars (now carried at around 110,000) may require drastic upward revision."

Who are the irregulars that are referred to there? I wish you would, in answering that, relate it to the categories as they are described. Mr. Colby, in the national intelligence estimate issued November 13, 1967. I assume that you concur with the estimate of November 1967 as being accurate.

Mr. COLBY. Yes; I think as accurate as we could get at that time.

Mr. TREEN. Right.

Mr. COLBY. I believe the figure of 110,000 irregulars at that particular date—we are talking in 1966, the year before—referred to a category in which we now include both the guerrillas, which were a more organized irregular force, and then the other Communist organiza-



tions, such as the self-defense and things of that nature. I believe the main thrust was on the organized and semiorganized guerrilla groups, and not so much on this self-defense category, which is a very loosely organized group. But the overall estimate carried at that time was 110,000, and what the particular memorandum to the Secretary of Defense said was that we think that that figure is not anywhere near big enough.

Mr. TREEN. What I am getting at is, it appears to me from the documentation that we have before us that at least by November of 1967 the CIA and the military were in agreement on figures.

Mr. COLBY. Yes.

Mr. TREEN. In agreement on figures, and what whatever figures we were utilizing in terms of our preparations in the early part of 1968 would be the figures set forth in this estimate.

Mr. COLBY. The figure set forth in the estimate was an attempt to identify a clear group of organized military kinds of organizations, but then to indicate that outside of that, there were a whole bunch of different groups that were very loosely organized which had to be considered as part of the total threat. But they were very difficult to quantify.

Mr. TREEN. My time is up. I will have to pursue it the next round.

Mr. KASTEN. Mr. Chairman, may I give my 5 minutes to Mr. Treen at this time?

Mr. DELLUMS. [presiding]. Without objection.

Mr. TREEN. I thank you, Mr. Kastan and Mr. Chairman.

Then on page 2 you talk about the fact that the North Vietnamese troops should be over 50,000 men instead of approximately 38,000.

Mr. COLBY. That is North Vietnamese.

Mr. TREEN. North Vietnamese. It is carried at 54,000 in the November estimate.

Mr. COLBY. A year and a half later, yes.

Mr. TREEN. Then in a November 1966 memorandum to Mr. Komer, special assistant to the President, CIA states that:

A reappraisal of the strength of Communist irregular forces which is currently underway indicates that accepted—that is, MACV—estimates of the strength of Vietcong irregular forces may have drastically understated their growth, possibly by as much as 200,000 persons.

Would you relate that category of people which you are talking about there, to the November national intelligence estimate?

Mr. COLBY. I think if you relate that back to the 26th of August estimate, you are talking about roughly the same general category, both organized guerrillas and the unorganized other forces.

If you relate it to the final national estimate in 1967—a year later—then you have broken that figure into a group called guerrillas which were carried at 70,000 to 90,000, and then you have added to it an unquantified number of these loosely organized groups.

Mr. TREEN. This is the secret self-defense forces?

Mr. COLBY. Secret self-defense, assault youths, and others.

Mr. TREEN. You, of course, believe that this November estimate is accurate and that estimate indicates 118,000 regular, indicates 35,000 or 40,000 service troops, 70,000 to 90,000 guerrillas, 75,000 to 85,000 in the Vietcong infrastructure—all of which give us a range of 298,000 to 333,000.

Then if you add in what could be up to 150,000—although I think you estimated something lower than that, of the defense forces and special defense forces—you get into the range of 450,000 people.

Mr. COLBY. Well, we said that some documents suggest that in early 1966 the aggregate size of the self-defense forces was on the order of 150,000, but that is a year ago.

Mr. TREEN. Tet happened in February of 1967—I mean 1968.

Mr. COLBY. 1968.

Mr. TREEN. In November of 1967, were there any phony figures around that anybody was operating on in your judgment?

Mr. COLBY. In my judgment, this estimate was an attempt to state accurate figures. The final outcome of the estimating process in which the military and CIA all participated was an attempt to come to some accurate figures and I think that this, in good conscience, was an accurate set of figures at that time—including the reference to the fact that there are some unquantifiable groups outside the actual numbers.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. Murphy?

Mr. MURPHY. Thank you, Mr. Chairman.

I would to ask Mr. Allen a question.

Mr. ALLEN. did you agree more with Mr. Adams' figures than you did with MACV's figures?

Mr. ALLEN. I was able to accept the final agreed upon figures as reflected in the estimate.

Mr. MURPHY. We have a report, a memorandum of record, on which you scribbled some notes on a 24th of November 1967, MACV Order of Battle Report, and your notes reflect three items.

You were asking yourself questions about the drop in administrative services from the August 1966 peak of 50,000 men. You were talking about the enemy's estimates then, and I quote:

"If we fall short by almost 50 percent from the documentary reflections of 180,000 (or 150,000) guerrillas in August 1966, why is it not likely we are still 40 percent low?"

"Example: Is it not likely that the guerrilla strength runs 98,000 to 136,000 rather than 70,000 or 90,000."

Mr. ALLEN. Those notes were made by me. I had forgotten all about them until the committee made available a copy of them, which had been provided to the committee apparently by Mr. Adams.

Those pencil scratchings were made by me at the time of my initial observation of the agreed figures coming out of the Saigon conference which preceded this national estimate—before I was aware of the textual additions and descriptions of the various forces that would appear in the estimate—they reflected essentially an initial emotional kneejerk reaction—not having yet debriefed personally the people that attended that conference—to the set of figures as they stood without these additional textual additions.

Mr. MURPHY. You further wrote, though, and obviously you were talking to yourself:

I consider this to be essentially a contrived retrospect effort aimed at rationalizing a phony comparison between the old figures and the new; the guerrilla estimate was controlled by the desire to stay below 300,000 within the framework of these "selected" criteria.

In this numbers game, were we trying to stay within certain figures, and if we were, why? Were we trying to deceive people?

Mr. ALLEN. Well, there was no effort to deceive people. As I said, that was an initial kneejerk reaction before I had debriefed the people who participated in the conference and before I had seen the textual additions in the estimate as it was finally prepared.

Those notes were strictly personal. I may have intended to send them in to Mr. Carver. They were just the staff advisory notes of a member of the staff.

Mr. COLBY. I think, Mr. Murphy, in answer to that question, it is pretty clear that the CIA was very substantially influenced by Mr. Adams' original studies, but we didn't accept every dot and title of his presentation. There is no question about it: In some of his earlier studies of these documents and studies into these very busy forces, he put some very general numbers around them and we initially accepted, to some degree, those numbers. That is where the 500,000 figure comes from.

Mr. MURPHY. Were you told by the people back here, though, when you went to this conference to keep the figures within certain parameters?

Mr. COLBY. I didn't go to the conference, but Mr. Carver did.

Mr. MURPHY. Mr. Carver, maybe you can answer that.

Were there any instructions to stay within certain limits of troop estimates and take certain categories and leave them out of the estimates?

Mr. CARVER. Absolutely not, Mr. Murphy. I was Mr. Helms' representative and the chairman of the Washington delegation. Mr. Helms sent me out to see if we could come to some agreement which would end there, being essentially two sets of figures—a field set and a Washington set—which had fairly large disparities. He told me that if we could reach substantive agreement to do it we would, and if we couldn't, then we couldn't. There were no other instructions other than that and we didn't do anything except to try to review and go over the evidence.

At least that is what the Washington delegation tried to do, and we came up with what we considered to be an honest and fair compromise agreement—the body of which, I have feared, is open to wide interpretation—but there were no prior instructions, and any allegation that there were is false.

Mr. MURPHY. When you were making your estimates, were they estimates in the classical sense as made in the First and Second World Wars and maybe the Korean war when everybody wore the same uniform and we knew the components of the battalions and companies?

Were your estimates based on that, or did you take into consideration the unorthodox war we were involved in?

Mr. CARVER. Of course we did. You put your finger on one of the root problems which bedeviled much of the discussion this morning, and I think frankly bedevils much of Mr. Adams' testimony.

The Vietnam war was not a classical, conventional World War I or World War II type of struggle. We had two armies in the field. The Communist force had a number of different components. They had main and local forces, that is, a regular army. They had administrative service units which supported them, which covered every-

thing from sophisticated sappers to part-time quarters. They had guerrilla units—

Mr. MURPHY. But they still were able to mount a major attack at that time.

Mr. CARVER. Precisely, but they had a whole range of things and trying to come to understand them conceptually was the first difficult problem.

The next problem was trying to ascertain how to explain them and quantify them and/or get some fix on their capabilities, using a wide variety of evidence, including documents of uncertain reliability in which authenticity was another problem. What we tried to do in Saigon, and what I think we successfully did in the estimate that was finally produced in the fall of 1967, which I commend to your reading—I think it was in the package that was handed to you this morning—was explained that you had a very complicated force structure with many different types of components which provided many different types of functions.

We assigned numbers where we felt numbers were reasonably assignable, and in those areas where we felt the numbers were spongy or were liable not to contribute very much, we didn't try to compose numbers.

Mr. DELLUMS. The time of the gentleman has expired.

The Chair now recognizes Mr. Kasten. I think Mr. Kasten, you only have 2 minutes. If you wanted to reserve and take 2 minutes on the second round, the Chair would be willing to receive a unanimous consent request for 7 minutes.

Mr. KASTEN. I just have two questions. I would like to go back to the testimony which Mr. Adams gave us a couple months ago. In one case he quotes, and now I am going to read from the testimony:

I quote now from comments on the draft by a CIA official, Mr. Paul V. Walsh, of the Deputy Directorate of Intelligence. "As seen from this office," wrote Mr. Walsh on October 11, 1967, "I must rank [the briefing] as one of the greatest snow jobs since Potemkin constructed his village." It was so bad, he concluded, that it "gives us all the justification we need to go straight again."

I am sure that you have seen that quote in the Adams' testimony. How do you explain that quote of yours, sir?

Mr. WALSH. I would like to make it clear that the quote is accurate, and I vouch for it—

Mr. KASTEN. The quote is accurate.

Mr. WALSH. It is, but I was not talking about the estimate nor was I talking about the agreement reached at the Saigon conference. I was talking about a briefing that the military press office in Saigon proposed to give on the basis of the new numbers, and, in my opinion and in the opinion of many people at CIA, the press briefing departed significantly from the agreed numbers reached for the estimate. That is what I was talking about.

For example, the agreement for administrative service forces I believe was at least 35,000 to 40,000. The draft press briefing dropped "at least" so it looked then as though we had a minimum and maximum number. There was language in the draft press briefing giving one the impression that self-defense forces were fifth columnists or fellow travelers, which I thought unnecessarily deprecated their abilities; and

finally, there was a tone in the draft that we had at long last solved the riddle about the numbers and we could put this set to bed.

I think everybody who ever worked on the order of battle or estimated enemy strength knew that we were going to be changing our numbers consistently, and I thought it was bad policy to come out with a set of numbers that looked as though they had been set in cement.

Mr. CARVER. On October 11, 1967, we took specific exception to that briefing in the letter we sent to the Department of Defense.

Mr. KASTEN. May I ask unanimous consent to use my next time period at this time?

Mr. DELLUMS. Without objection. The gentleman is recognized for 5 minutes.

Mr. KASTEN. Go ahead.

Mr. CARVER. On October 11, they sent the draft of that briefing over to the agency for comment. We were talking again, as Mr. Walsh said, about the press briefing that MACV proposed to give. We are not talking about the estimate. We are not talking about the results of the Saigon conference.

Mr. KASTEN. If I may interrupt for just a moment, Mr. Adams, referring in these comments to what he called the draft briefing, at the beginning of the paragraph that I quoted from, said, "The draft briefing was so blatantly misleading that it made some CIA officials question the wisdom," et cetera, et cetera.

I think we are referring to the same thing, but what you are saying is it was the draft you objected to.

Mr. CARVER. On the 13th of October I sent Mr. Goulding—who was then Assistant Secretary of Defense for Public Affairs—a memorandum—I was at that time Mr. Helms' Special Assistant for Vietnamese Affairs—on the proposed press briefing, taking exception to saying we have reviewed it and that we have serious substantive and procedural problems with it and cannot support it or concur in its use.

Then I went on for 3 pages explaining why.

Mr. KASTEN. The fact is, you pointed out your objections to the briefing that was about to take place or at least there were some questions as to the numbers, but you believe you took a position.

Mr. CARVER. That is right. Mr. Helms was not responsible for the briefing given by the MACV PAO.

Mr. KASTEN. Who was responsible for that briefing?

Mr. WALSH. Mr. Kasten, I might add a footnote to what George has said. Even though we wrote that memorandum to Phil Goulding, we had some influence on what the final draft of the briefing was like when it was given, I believe, in November, and then it was much more in accordance with the numbers that were in the estimate.

We still had not associated ourselves with it.

Mr. KASTEN. In another part of the Adams testimony, he referred to an article on November 24 and goes back to a November 24 memorandum. I will just pick up his testimony:

\*\*\* by this time, the press was so thoroughly confused with conflicting stories that the disappearance went unnoticed. On the same day, Mr. George Allen, Deputy Assistant for Vietnamese Affairs to the Director, Mr. Helms, wrote that Westmoreland's numbers were contrived and phony and that his estimates were controlled by a desire to stay under 300,000.

That evidently is from notes on a November 24 report and I will read the whole thing:

I consider this to be essentially a contrived, retrospective effort aimed at rationalizing a phony comparison between the old figures and the new; the guerrilla estimate was controlled by the desire to stay below 300,000 within the framework of these selected criteria.

I assume what Mr. Adams is referring to is what is written here. Is that correct? Did you say it or did you not say it?

Mr. ALLEN. I wrote that on that piece of paper, yes, I did.

Mr. KASTEN. You did that by mistake?

Mr. ALLEN. No, sir; I say it was an emotional knee jerk reaction. May I add further that there is also in those notes the statement, and no one has quoted it yet, that says, "This is [a] step in [the] right direction, but only a single step, not an entire journey," indicating that I thought the conference generally had made some progress, even before I heard these explanations.

Mr. KASTEN. This is [a] step in [the] right direction, but only a single step, not an entire journey.

Is that what you are referring to?

Mr. ALLEN. Yes.

Mr. KASTEN. But the fact is that Westmoreland's numbers were contrived and phony and his estimates were controlled by a desire to stay under 300,000?

Mr. ALLEN. That was an impression I had at the time I saw the numbers and that was my emotional reaction. I don't know whether they were contrived actually to stay under the number 300,000. It seems to me in my state of mind at that time that must have been what controlled it.

Mr. COLBY. Our analysts get pretty intense in their feelings about some of these questions, Mr. Kasten, and we still do it today on other issues.

Mr. KASTEN. I frankly think that we might be stretching it a little bit if we are looking at notes on the bottom of a piece of paper, but I thought it was important because those were two parts of the Adams testimony that you should have a chance to respond to.

Thank you, Mr. Chairman. Mr. Treen might want to use my time.

Mr. DELLUMS. Your time has expired.

Mr. Lehman?

Mr. LEHMAN. Thank you, Mr. Chairman.

Just thinking back to some of the things I have read, I wonder how many of you gentlemen ever read any of Graham Greene's books? Have you read "The Quiet American"?

Mr. COLBY. I have.

Mr. LEHMAN. I find when you use the expression "not to understand something conceptually" that Graham Greene—I think he wrote that book around 1950 or 1951—based on some experience he had there long before we ever got into this situation, seems to have a conceptual understanding of the impossibility of understanding the motivations and what you called the capabilities of the armed services of that particular kind of culture. I think there are limitations in any kind of intelligence operation in trying to translate this one kind of a culture into another kind of a culture, because in fact, it just doesn't translate. I think that it is not so much a question of who is giving the wrong, misleading

directions or the wrong, misleading type of figures, but the fact that we couldn't even estimate our own allies.

How could we even estimate the enemy? I think that this is what really bothers me. In the time I have been on this committee, I have learned to appreciate the integrity of the CIA and its capabilities, but I also have a sense of the limitations of these capabilities when it intrudes in a wholly different kind of environment from the reference points that we have constructed institutionally in this country.

To translate that into something else—forget about Vietnam. In a sense it is painful, but it is really water under the bridge. Where do we go from here? We are faced with a number of similar possibilities of misused or misguided data stemming from these kinds of estimates of possible enemy capabilities.

For instance, in North and South Korea we could find ourselves in a matter of months or years underestimating the capabilities of North Korea or South Korea, if our estimate is based on what we learned there 25 years ago that may not even be applicable today. I am just concerned about how can we possibly prevent the kinds of miscalculations, the misconceptualizing or lack of understanding of what is going on—the basic limitations of someone like this fellow Pyle, and Graham Greene, who is dealing from one culture into another culture without knowing what the hell he was doing.

Mr. COLBY. I think that is why we have a professional intelligence service—because you have people who study foreign cultures and try to work themselves into the thought processes, learn the languages, understand the people, the cultures, and then can translate some of those events into something comprehensible to us.

I grant you that there are some motivations around the world that are hard to understand, but professional intelligence people can do a better job than the unprofessional amateur can do.

Mr. LEHMAN. Nobody ever wrote poetry in any language but what he first learned it to begin with, and this is something that you almost have to understand beyond the translation of the language. It is almost self-limiting, when you take the most professionally trained person from this culture and insert him in a culture that has no reference points from his early childhood. I am just looking at that from the standpoint that we are going to have to intuitively assess things—which is sometimes better than what the professionals can do.

Mr. COLBY. I think, though, Mr. Lehman, we are going to have to live in a world that has these different cultures and we are going to have to get professionals who will dedicate themselves to an understanding of these different cultures. I think that is what a professional intelligence service is all about.

I think we have worked on that and I think we have achieved a great deal on it. We are not 100 percent and I don't think, as you say, we will ever be 100 percent, but I think we are a lot better off with a professional effort on it than by giving up and not trying.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. Field?

Mr. FIELD. Thank you, Mr. Chairman.

Mr. Colby, I would like to address two points this afternoon. I think they are two of the three main points that I would get out of Mr. Adams' testimony.

The first, I think, is that he was trying to say that the figures that he came up with on enemy force strengths were significantly higher than what the military was putting out; second, that the military figures seemed to prevail and were used more than his figures, his estimates; third, the motive, which was obviously the idea that this was to be sold to the press and the American people.

I would like to go into the facts of the first two—whether or not the CIA figures were different from military figures. Now, prior to the Tet offensive, was there a major difference between CIA figures on enemy force strengths and military figures?

Mr. COLBY. On enemy force strengths, no. The national estimate had the regular force estimates and the comprehensible forces that we could look at, and that is what the order of battle conference and the special national intelligence estimate was all about. It worked out some differences.

There were differences, but they put them together in the bones that they could resolve some differences. The differences weren't big enough so that they made that much of a difference and they did resolve those.

Mr. FIELD. I am a little confused because your statement, if you read it carefully, seems to indicate in many cases that the military figures were underestimated and in some cases significantly underestimated.

Now, moving to the estimated guerrilla forces we heard General Graham testify this morning that there were, prior to Tet, 70,000 to 80,000 guerrillas. Was that also the CIA's estimate?

Mr. COLBY. The guerrilla estimate was, in the final figures, 70,000 to 90,000.

Mr. FIELD. All right—70,000 to 90,000. He said 70,000 to 80,000 this morning. That is not terribly different.

Was that CIA's general range?

Mr. COLBY. That is what we accepted as "guerrillas"—which meant fairly well organized guerrilla forces—but it is not what we said. We did not have a figure for the additional very loosely organized forces and neither did the military.

Mr. Adams had initially set a figure for those and we had originally proposed a figure of a couple hundred thousand or something. It was a very round number because we knew that it was a very difficult thing to quantify.

Mr. FIELD. Weren't you in fact estimating that there were something in the neighborhood of 200,000 or more of these kinds of forces?

Mr. COLBY. Yes; and in a very unquantifiable way.

Mr. FIELD. There is a difference between 200,000 and 90,000 here. That is a significant difference.

Mr. COLBY. No; the 90,000 was constant all the way through. In other words, you have your 70,000 to 90,000 guerrillas which were constant underneath that 200,000 we are talking about. One of the problems in here is the number of different forces we are talking about and a change in the nomenclature of what we were using in about 1966-67.

In the earlier quotations I have there, when I say guerrillas and irregulars, we said about a third of those are guerrillas and the rest of them were these unorganized forces.



Now, that is about the degree of precision it had.

Mr. FIELD. Again you seem to indicate that you are in agreement with MACV on November 23, 1966. In a document written at that time, it says:

A reappraisal of the strength of Communist irregular forces which is currently underway indicates that accepted (that is, MACV) estimates of the strength of Vietcong irregular forces may have drastically understated their growth, possibly by as much as 200,000 persons.

Now, that is a clear-cut disagreement of 200,000.

Mr. COLBY. In 1966, yes.

Mr. FIELD. With MACV figures. How can you say you agreed with them at that time?

Mr. COLBY. Oh, no; I said by the time of the national estimate in 1967, late 1967, we did reach an agreement.

Mr. FIELD. Here we are on the 23d of May 1967:

"Latest U.S. order of battle holdings"—which I assume are the military figures or the agreed upon figures—"list their strength at 113,000. Studies by COMUSMACV, however, indicate that irregular strength is more likely in the neighborhood of 190-200,000."

That is quite a difference.

Mr. COLBY. In May 1967 we said the paramilitary and political organization is still probably far larger than official U.S. order of battle statistics indicate. We did have a difference at that time.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. Murphy, you have a unanimous-consent request?

Mr. MURPHY. Yes; I would like to yield, without objection, all my time to Mr. Field.

Mr. DELLUMS. Any objection? Hearing none, the gentleman may proceed for 5 minutes.

Mr. FIELD. Again on May 23, the CIA says, and I believe this was a CIA report to the Secretary of Defense:

We estimate, however, that the strength of the so-called "administrative services" (and noncombat support troops) is in the 75,000-100,000 range, that the strength of the "irregulars" is in the 200,000 range, and that the number of Vietcong political personnel is in the 80,000 range. Thus the overall strength of the Communists' organized force structure in South Vietnam is probably in the 500,000 range and may even be higher.

Those are the same kinds of figures that Mr. Adams spoke to.

Mr. COLBY. Yes; and those are Mr. Adams' figures.

Mr. FIELD. The military at that time was saying—correct me if I am wrong—299,000. That is a difference between 500,000—right here in black and white—and 299,000.

Mr. COLBY. I think I can explain this on a time frame.

What happened was that the military had some lower figures in Vietnam and we were leaving the order of battle problem to the military. In about 1966 we began to put some attention to it. We identified what we thought—and Mr. Adams contributed very substantially to this process—was a larger figure for this whole irregular category.

We then raised this in 1966 with the appropriate authorities. This seemed to be a much bigger figure—even up to 500,000 or more.

Mr. FIELD. That is CIA? That became CIA?

Mr. COLBY. That became CIA.

Mr. FIELD. It is not Adams; it is CIA?

Mr. COLBY. Yes.

Then we had a debate about what the components of these figures are. This debate continued through 1967 and it led to a couple of these conferences, at which we got the people who thought it was only the 299,000, or whatever it was, and the 500,000-odd and put them together to see if they could resolve the differences.

What the difference came down to was this: They pretty well agreed on what could be called the regular forces in some fashion or other and even the organized guerrilla groups, but there was a question about the remaining loosely organized groups which we had originally put a number on of around 200,000 or more. The question then was, can you really quantify those in terms of good evidence and we fell off of the quantification of those particular kinds of amorphous groups because it was very difficult to sustain the technical order of battle support for such groups. The military, of course, made the first point that they weren't really part of the troop strength that the military were concerned with combating, and consequently the national estimate came up with the final figure of 330,000, or whatever it was, pretty well organized forces, plus the unquantified additional loosely organized forces.

Mr. FIELD. I understand what the military problem was and it was really a difference in approaches; but, nevertheless, isn't it fair to say that the CIA during 1967 was looking at figures in the 500,000-plus range or "organized force structure," and that when you went to a conference in September in Saigon, the agreed figures that the U.S. Government came out with—CIA and military—were in the 300,000 range and not the 500,000 range?

Mr. COLBY. It was 300,000, plus other unquantifiable forces.

Mr. FIELD. But the figures that were passed back in cables, the figures that were briefed to the press, the figures that came back to the Government, were in the 300,000 range and there was not a lot of emphasis—

Mr. COLBY. But we always stated there was an additional unquantified force beyond that.

Mr. FIELD. Anywhere from 100,000 to 200,000.

Mr. COLBY. It could have been any number, frankly.

Mr. FIELD. The figures presented were obviously oriented toward 300,000.

Mr. COLBY. These were the forces that our forces were combating. That is what the argument was.

Mr. FIELD. Was there any attempt to say that this additional unquantified group is probably in the 200,000 range?

Mr. COLBY. We certainly did not say that in a formal sense—those numbers.

Mr. FIELD. There are no documents here showing that coming out of CIA. The CIA was alone with the CIA figure.

Mr. COLBY. We fell off the attempt to quantify the amorphous groups because our evidence in support of any quantification of those was not very good. Take the occasional help you get from an individual who walks into a marketplace and throws a grenade. Is that a number or not?

Mr. FIELD. The reason that you went with the 300,000 figure—and you used the additional figure—was you couldn't quantify that additional group. And yet in your own documents in January of that year you said:

\* \* \* there is now documentary evidence which strongly suggests that at the beginning of 1965, irregular strength was about 200,000 and that the goal for the end of 1965 was 250,000-300,000. More recent documentary evidence suggests that this goal was probably reached, at least during 1965.

Mr. COLBY. And the documentary evidence suggests it was goals. It was all those amorphous categories of things; and when you got down to describing what real evidence you had for a firmer number there, you didn't have much.

Mr. FIELD. So your testimony here today is not that the military figures prevailed—in other words, that everything was harmonious—

Mr. COLBY. No, no; we had lots of arguments about the details but—

Mr. FIELD. Wasn't there about a 200,000 difference?

Mr. COLBY. No. We settled upon an agreed figure for the regular forces. We settled on the fact that there was an additional force beyond that of unquantifiable numbers. We did not say that the figure went from 300 to 500 or from 500 to 300 because the total we had been talking about in the 500 area was included in the 300-plus unquantifiable forces that we later gave.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. COLBY. We weren't using a number for the final figure.

Mr. WALSH. I might be able to shed a little bit of light on this which really is going to reflect, as we said somewhere in our testimony, that this business is a very imprecise art.

For example, in December of 1966 Sam Adams said that the whole bag of whatever you want to call them was 600,000. Then we sent him out to Saigon to do some field research and he came back and said it was 500,000. There is the genesis of our May 1967 number.

What we were trying to say, and what you are seeing in that document, is the intelligence process working. We are grappling with the problem. We don't have that kind of hard evidence. We are trying to measure it from different perceptions and angles and we don't know whether it is 100,000 or 200,000 or any kind of a number that doesn't have a lot of zeroes in it.

Another example is that as we continued to work on this, we came up with the judgment in early 1968, for example, that self-defense forces were 100,000, as a single number. We had a conference with MACV and DIA and other representatives of the intelligence community. We were able to agree that we were so unsure of the precision of this number that when the conference concluded we said it was somewhere between 80,000 and 120,000. So this is a very uncertain and a very trying estimative problem.

Mr. COLBY. Mr. Field, I was responsible for self-defense forces on the other side of this war. We gave out a half million guns to self-defense forces. Now, I was pretty sure that that half million guns were out there, but I was also convinced that some of them were being used by two and three people in sequence, some of them were being used by one person alone, and some of them were probably locked up in the armory. And we had all sorts of figures about the total number of self-defense members.

The figures went up to the 2 and 3 million category which, frankly, I never accepted because I knew how weak the figures were—and that

was on our side with our own direct reporting of what was going on—because of the imprecision of what a self-defender really is and how you count him.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. Colby, I would like to take you back to a few of your quotes—quotes from the Agency—and get your statement as to what you really meant. First quote:

Recently acquired documentary evidence, now being studied in detail, suggests that our holdings on the numerical strength of these irregulars (now carried at around 110,000) may require drastic upward revision.

What did you mean by that?

Mr. COLBY. What we meant by that was that in August 1966—which was when that was stated—the word “irregular” consisted in our rough concept at the time of about one-third guerrillas and about two-thirds other forces and that the total for that group had been carried at about 110,000.

We had put some work on this question, and Mr. Adams had done a lot of the work of looking at documents, trying to find out what the strength of these irregulars really was instead of this general figure. The initial evidence from captured documents indicated that the figure was probably considerably more than what we had been carrying as 110,000.

Mr. DELLUMS. The second quote:

If the reports are accurate, and past experience suggests that many of them are, the total number of North Vietnamese troops now in South Vietnam would be well over 50,000 men instead of approximately 38,000 as is now carried by MACV.

Mr. COLBY. This was June 1966.

There was a debate as to how many of the enemy troops were North Vietnamese and this was a very difficult matter to determine. You had to look at the infiltration figures, the strength figures, and captured and prisoner reports and things of this nature, and the figure at the time was 38,000.

Our investigations, in looking into the various kinds of reports, led us to believe that it was well over 50,000 instead of 38,000. The overall figure of North Vietnamese troops was 54,000 in the national estimate, but that was 1½ years later and much had changed in the interim.

Mr. DELLUMS. The next quote:

A reappraisal of the strength of Communist irregular forces which is currently underway indicates that accepted (that is, MACV) estimates of the strength of Vietcong irregular forces may have drastically understated their growth, possibly by as much as 200,000 persons.

Can you explain that for us.

Mr. COLBY. Yes.

That is a memorandum which followed by a couple of months the August memorandum that we first discussed and it essentially says that our view, as distinct from August, may require upward revision. We were coming to a drastic change of perhaps 200,000. It was essentially that evidence which was continually being scrubbed and looked at and examined in trying to get some precision.

Mr. DELLUMS. The final quote:

We believe the Vietcong paramilitary and political organization is still probably far larger than official U.S. order of battle statistics indicate. Thus the overall

strength of the Communists' organized force structure in South Vietnam is probably in the 500,000 range and may even be higher.

What do you mean by that?

Mr. COLBY. Well, we meant that the official military estimate at that time was 292,000, referring to the troops. We said that we believed it was considerably larger than that and when you looked at the overall paramilitary and political organization, the overall strength of the Communists that we were facing in Vietnam was probably in the 500,000 range or more. That includes the 292,000 but also a lot more beyond that in this amorphous group of forces that we saw on the edges of the regular apparatus.

Mr. DELLUMS. Thank you, Mr. Colby.

Mr. Allen, what are your qualifications to make any judgment on Vietnam?

Mr. ALLEN. My qualifications?

Mr. DELLUMS. Yes.

Mr. ALLEN. You mean my professional qualifications?

Mr. DELLUMS. Yes.

Mr. ALLEN. I worked directly on the Vietnam problem for a total of about 12 years as an analyst for the Department of the Army, the Defense Intelligence Agency, and with CIA. For another 6 years the problem was within my sphere of interest but it was only part of my responsibilities.

Mr. DELLUMS. In other words, you are very qualified to make such judgments?

Mr. ALLEN. I had some experience with the problem; yes, sir.

Mr. DELLUMS. Did you go to Pleiku after the Tet offensive?

Mr. ALLEN. Yes, sir.

Mr. DELLUMS. Did you see damaged aircraft?

Mr. ALLEN. Yes, sir.

Mr. DELLUMS. How were they parked?

Mr. ALLEN. There were rows of the remnants of helicopters which would have been parked more or less as close together as you can get them, but just the remnants of them were there on the taxiway.

Mr. DELLUMS. What is the quality, in your expert judgment, of the 87,000 figure given by MACV as the number committed to Tet?

Mr. ALLEN. An estimate of that sort is very difficult to arrive at and it depends on an analysis of to what extent parts of units or whole units participated.

In some instances a regiment may have been directed to be involved in the attack, but may have used only parts of its capabilities such as its mortars or its artillery pieces in actual implementation of the attack order.

My personal feeling was—without having done a detailed study of the problem but with my understanding of the nature of the operation—that the 65,000 to 80,000 figure that was used for the participating forces was probably on the low side, and that it would not really have included all of the components that did participate.

Mr. DELLUMS. Thank you, Mr. Allen.

Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

Mr. Carver, following the order of battle conference held in Washington in April 1968, you were the one who was designated to brief

the President of the United States on the results of that conference, were you not?

Mr. CARVER. I think we have two things confused. I did not actually brief the President after the order of battle conference, though my associates—including both Mr. Adams and Mr. Allen—did draft the note of the estimate that Mr. Helms passed to the President at a Tuesday lunch meeting before the estimate was issued.

I did brief the President in March of 1968 after the Tet offensive and prior to his announcement of his intent not to run.

Mr. McCLORY. I don't want to inquire specifically into that conversation, but you did provide information regarding all the numbers, did you not?

Mr. CARVER. Yes, sir. We did our best to provide the most accurate and candid appraisal we could of the enemy strengths in Vietnam. We also did our best to call attention to areas where the evidence was spongy and we had to either use ranges or any figures were liable to be misleading. We were not infallible, but we certainly tried to be as candid and accurate as we could be.

Mr. McCLORY. Were you surprised when President Johnson announced that he would not seek reelection?

Mr. CARVER. Yes, sir, I was.

Mr. McCLORY. That occurred when—about 10 days after this briefing paper was handed to the President?

Mr. CARVER. It occurred very close to it.

What actually happened was President Johnson convened a group of advisers known colloquially as the "Wise Men." I was one of the officers called upon to brief him on the Tet offensive, the others being Mr. Habib and General DePuy. He was somewhat taken back by their recommendations. He had me down in the Cabinet room for 2 hours to hear the briefing I had given them.

Soon thereafter he stepped down, but I don't think there was any connection between the two.

Mr. McCLORY. Just coincidence.

Mr. CARVER. That is right.

Mr. McCLORY. I yield the balance of my time to my colleague, Mr. Treen.

Mr. TREEN. Thank you, Mr. McClory.

Mr. Colby, let me see if I can verbalize what I believe to be the sense of your testimony about these figures.

Your round figure—that the CIA thought, included the whole bundle of the enemy numbers, meaning regular forces, the support forces, the infrastructure, and all of these special defense forces—was around 500,000?

Mr. COLBY. Or more.

Mr. TREEN. 500,000 or more. The military was saying that the order of battle was about 292,000 at the time.

Mr. COLBY. Right.

Mr. TREEN. But weren't you talking about different bundles of people?

Mr. COLBY. Very much so, Mr. Treen.

Mr. TREEN. And that accounts for the large part of the difference?

Mr. COLBY. Right; very much so.

Mr. TREEN. The military up until the time that you got agreement on this was inclined not to include these self-defense forces. These were people including, as they say, women, old folks who lived in the hamlets, having no offensive capability, but you have to recognize they are going to side with the enemy when the chips are down.

Mr. COLBY. That is part of the war.

Mr. TREEN. That is called the SD forces. You have the secret self-defense, self-defense forces, similar people, but not in controlled areas?

Mr. COLBY. Right.

Mr. TREEN. So in effect the military was saying, "There are 292,000 of the enemy; we are not counting these special forces," and you are coming in and saying, "We have to consider these forces in the overall bundle"?

Mr. COLBY. Right.

Mr. TREEN. So you were talking about two different things when you gave these figures, although you had some differences?

Mr. COLBY. There were some differences, of course, but the military was essentially saying they had 300,000 people to fight and we said you may have 300,000 people to fight, but there are a lot more of them over there you have to worry about.

Mr. TREEN. And their figure of 300,000 people to fight, in the sense they were using it, was not that far off.

Mr. COLBY. No. We had differences but not enormous ones.

Mr. TREEN. Of course, you are talking about different time periods here. You had increases and decreases perhaps in different categories.

Mr. COLBY. Yes.

Mr. TREEN. On page 4 of your testimony under the heading "The Order of Battle Conference in Saigon," in the second paragraph you say:

The final agreed figures resulting from the conference, particularly those for the VC/NVA combat forces, represented a significant move on the part of MACV, most notably regarding the category of administrative services or support groups.

My information is that in June of 1967, the military command was saying that there were 25,313 in the administrative services, and that as a result of the conference that figure was 37,650.

Mr. COLBY. The final figure was 35,000 to 40,000.

Mr. TREEN. 35,000 to 40,000, so the 37,650 is right in between.

Mr. CARVER. Excuse me.

There was one addition to that, sir. We said in the text—this I think was insisted on at the conference—we said the administrative services are hard to quantify but the number is at least in the 35,000 to 40,000 range.

Mr. DELLUMS. The time of the gentleman has expired.

Mr. Treen is recognized for 5 more minutes.

Mr. TREEN. Thank you, Mr. Chairman.

The next question I realize is perhaps not in your sphere of expertise, but if you have a judgment on it I would appreciate having it, Mr. Colby.

One of the major accusations of Mr. Adams was that the military fooled itself about numbers. There is a separate issue you hear about—whether the military fooled the public, fooled the Congress, and that

sort of thing—and maybe that is an interesting issue; but the point here is that Mr. Adams is saying the military fooled itself, and that that had its repercussions at Tet.

Is there any evidence to this effect, that the outcome of the Tet offensive had a deficit effect because we fooled ourselves about military figures?

Mr. COLBY. I don't think so, Mr. Treen. I think the military figures, plus or minus a minor percentage, were roughly accurate as to the forces that they were fighting and the forces that took part in Tet. As you say from the other testimony, a fairly small percentage of that, even the 300,000, was involved in the physical attack at Tet itself.

There was a broader and better coordinated attack country wide than perhaps had been anticipated.

Mr. TREEN. But the manipulation of numbers——

Mr. COLBY. But the numbers didn't do that much to it and actually the military had prepared for Tet. They had moved forces and moved troops which enabled them to fight off the Tet attack a lot better than they would have otherwise.

Mr. MURPHY. Will the gentleman yield at this point?

Mr. TREEN. Sure.

Mr. MURPHY. Mr. Colby, you weren't here this morning, but I asked Lieutenant General Graham about the Tet offensive and he said they had 36 hours notice. Yet it was reported that half the South Vietnamese Army was on leave.

Mr. COLBY. We are talking about U.S. forces.

Mr. MURPHY. I mean you were both fighting the war together.

Mr. COLBY. The U.S. forces were prepared and did move troops in order to defend themselves better. The command structures of the Vietnamese and the command structures of the American troops were independent and parallel and the degree to which the Vietnamese reacted—in some areas they prepared and in some areas they didn't.

Mr. MURPHY. But the facts almost belie what you just said. You had planes lined up in a row. You lost, I think the number was, well over 200. They were hit by rockets, regulars with rockets, as Lieutenant General Graham said this morning. They came in with grenades and everything. I don't see how you can really have battle preparedness and have that happen.

Mr. COLBY. The fact is that a surprise attack at night, even against well prepared troops, will have an initial impact, of course.

Mr. MURPHY. But you don't have planes lined up like that.

Mr. COLBY. I really can't talk about where the planes were lined up, but the fact was that the Vietcong suffered a military defeat in Tet. They accomplished an enormous psychological victory—there is no question about it—but they did suffer a military defeat in Tet.

Mr. TREEN. Mr. Colby, the third major point sought to be established in Mr. Adams' testimony in September was that he didn't get a hearing. That statement of mine may not be quite accurate. I think he said he got some people to listen to him but he didn't think that he was heard, or that his arguments were received and heard and properly evaluated.

Can you comment on that point?

Mr. COLBY. I think he was certainly heard. He was not necessarily fully agreed with. This is sometimes a difference between the plaintiff



in the case who may have been heard but didn't win the case. He was heard on a variety of occasions as a member of our team that went to the order of battle conferences. He was heard in discussions in the CIA. He was heard in the course of a special post mortem set up by the Director at the time, Mr. Helms. He was listened to in his complaints by our Deputy Director, Admiral Taylor at the time.

I think he was very thoroughly heard, although he was not agreed with on every one of his points. On some of his points he did find agreement, there is no question about it.

Mr. TREEN. Is it true an arrangement was made for him to be interviewed by Patrick Coyne, the Executive Secretary of the President's Foreign Intelligence Advisory Board?

Mr. COLBY. I believe he was.

Mr. TREEN. Is it a little unusual for someone at his level to have a special interview?

Mr. COLBY. It is a little out of the ordinary, but we do sometimes allow people to go to present their case in various situations.

Mr. TREEN. There was some suggestion earlier that there may have been some obligation on the part of the CIA to make public, perhaps to Congress, information, information on your estimates. Were you under any order or any Executive order or under the compulsion of any statute to make this information public? Was that your role or function at that time?

Mr. COLBY. These assessments were classified at the time. Certain of them were declassified by the administration later and used in their briefings, but the CIA at that time believed that its function was to report to the executive branch, give assessments to the executive branch and to respond to requests from the Congress for briefings and, when requested, CIA did respond to such briefings.

With respect to the public, no, I do not believe it was conceived to be CIA's role at the time to issue public statements.

Mr. TREEN. I agree with you fully. It would be up to the executive, at that time headed by President Lyndon Johnson, to make this information available if he so chose to do.

Mr. COLBY. Yes; and certain of it was, I guess.

Mr. DELLUMS. Mr. Colby, we agree Vietnam was not a conventional war. Second, I think we agree that their regular forces were an essential part of the Vietcong-North Vietnamese Army forces.

Mr. COLBY. An essential adjunct to, rather than an essential part of.

Mr. DELLUMS. If irregular forces were a sizable factor in that Vietcong-North Vietnamese Army force, then isn't any estimate that does not include those forces a "wrong" estimate, and without understanding the full capacity, wouldn't a military field commander tend to minimize opposition and act accordingly?

Mr. COLBY. I think the estimate did not exclude those forces. The estimate said there were more or less 300,000 organized forces and there was an additional unorganized, unquantified force that the people should be concerned about; so I think the estimate said there was an additional problem.

The field commander, I think, with some justification, was worried about the combat forces that he faced.

Mr. DELLUMS. Isn't that the key issue? The MACV people placed that figure at between 70,000 and 90,000. Your Agency set it at ap-

proximately 200,000, and that is not an important and significant difference in the battlefield?

Mr. COLBY. That really wasn't the difference that we are talking about, Mr. Dellums. The 70,000 to 90,000 was agreed between the military and ourselves after the conference and in the national estimate. Also it was agreed between the military and ourselves that the other less organized forces beyond that were not quantified, but they existed and had to be worried about. There wasn't the difference between 70,000 and 200,000, no. That difference did not exist.

Mr. DELLUMS. If you all agreed on the figure, why wasn't that figure added to the 299,000?

Mr. COLBY. The 70,000 to 90,000 was included within the 299,000. It was a part of that total figure.

If I may, Mr. Dellums, I think that this whole aspect of the war, the unorganized part of the war, was not given a great deal of attention during the early part of the war. Only after 1967 was it given a major part of the attention of the military command as well as of the rest of us, and that was the job I had—working under General Abrams—to cite that part of the war. I think we put a great deal of effort and energy into it. Essentially, Mr. Dellums, I think we won that part of the war because in 1972 there weren't any guerrillas in the attacks by the North Vietnamese and in 1975 there weren't any guerrillas in the attack by the North Vietnamese. The guerrillas were all on the South Vietnamese side.

Mr. TREEN. The special national intelligence estimate of November 13, 1967—entitled "Capabilities of the Vietnamese Communists for Fighting in South Vietnam"—has been declassified and it is in our records. I don't want to make our record too bulky, but I would ask that the pertinent portion of this be made a part of the record at this point. That would be starting on page 10, the section on the "Military Situation in the South," and the subheading "A. Communist Forces," through the middle of page 16.

Mr. COLBY. If we are going to put that in, we might add the introductory note on page 1.

Mr. TREEN. I would be glad to add that, Mr. Chairman.

Mr. DELLUMS. Without objection.

Mr. MURPHY. Is there anything else you want to add?

Mr. TREEN. I can put it all in.

Mr. COLBY. I think pages 1 and 2 are enough.

Mr. DELLUMS. We want to try to keep it down.

Mr. TREEN. I am not trying to burden the record, but I think you will agree that these pages tend to sum up the entire estimate of what the Communist forces were in South Vietnam as of November 1967. This was the information that was on the table available to our commanders, to our Chief Executive, the President of the United States, and it, in summary, consisted of 118,000 regular forces, meaning Vietcong and North Vietnamese Regular Army people.

[The material referred to is printed on pp. 1981-1991 of the appendices.]

Mr. DELLUMS. We will now hear from Mr. Graham.

**STATEMENT OF JAMES C. GRAHAM, FORMER CENTRAL  
INTELLIGENCE AGENCY EMPLOYEE**

Mr. GRAHAM. My name is James C. Graham. I live at 10252 Democracy Lane, Potomac, Md. I was employed at the Central Intelligence Agency from July 1, 1948, until my resignation on December 31, 1973. Throughout my career at the Agency I was involved at one level or another in the analysis of Asian affairs, including the situation in Vietnam.

I think, along with one other member of the Agency who is now present—George Allen—my connection with Vietnam probably extends further back in years than anyone else at the table, though my involvement was not as intensive as some.

In 1966 I was appointed to the Board of National Estimates which, as you all know, was part of the Office of National Estimates which had the function and responsibility of producing coordinated national intelligence in those days.

I was a member of the Board in 1967 and had the responsibility of overseeing, chairing, pulling together the workers, coordinating this national intelligence estimate which has just been released and I have seen for the first time today.

I regret that my testimony duplicates to some extent things that have been said here today but to make a coherent presentation I am afraid I must go through it.

I am going to ad lib occasionally.

You all have copies of my testimony, I believe.

Adams' charges have been described in various ways here today but from reading them carefully, I think they boil down to two separate and distinct components: first, that the intelligence process was corrupt and, second, that deliberate underestimates of Communist strength were responsible for the surprise at Tet in 1968.

Let me say first that all of Sam Adams' charges, whether they have appeared in "Harper's," before this committee, or in earlier forms, are burdened with obvious internal contradictions.

In effect, Mr. Adams is asking this committee to believe that the command in Saigon, while aware of the "true" strength of the Communists, deliberately put their own mission, their own equipment, and their own troops in jeopardy by acting on the basis of a "deliberately downgraded" strength estimate. Such a simple-minded proposition seems to assume a highly credulous audience in the Congress, the press, and the American public. In fact, the surprise at Tet had very little to do with estimates of Communist strength.

I think there was an intelligence failure at Tet, but I think it was composed of many elements, and the anatomy of any intelligence failure is always a very complicated thing. It is difficult to go back and make a real reconstruction of all of the factors that went into it, but I think the principal element in this case was that while a winter-spring offensive was expected, few, if any, people really believed the Communists would run the great risks involved in the attacks on the towns and cities, where they would expose their troops to grave losses, which in fact happened.

As James Ogle hoped to tell this committee, even the working level CIA analysts in Saigon—who were certainly not part of any MACV conspiracy—were skeptical about their own conclusion that there was going to be an attack against the cities.

As Ogle pointed out in an interview in the Washington Star on September 22, 1975, Sam Adams' charges were "irrelevant" to the surprise problem because the Communists only used about 67,000 troops. I don't know how many they used, whether it was 67,000, 80,000, or 90,000.

To repeat, the problem at Tet was one that has plagued not only intelligence analysts, but also military commanders, Presidents, Congressmen, and all mankind. That is to say, the problem of perceptions.

The Communists surprised us by doing something that risked great loss, if more ARVN and United States units had been deployed closer to the city, had they expected the attack.

The Communists did this, I believe, not because they were strong, but because they did in fact face a steady decline in their fortunes if they could not by some dramatic blow undermine U.S. support for the war.

I recognize that is contrary to the popular view, but I think the objective evidence which I have tried to deal with all my professional career supports that judgment.

Let me now turn to the problem that Sam Adams defines as corruption in the intelligence process.

First of all, based on what I have heard here today and what I have known for years, I think part of the problem over figures which we are wrestling with hasn't really been fully exposed, although General Graham touched on it and I think Mr. Colby did, too. But the fact is, if you go back in time and try to re-create the situation, you will see much more clearly that in 1966 and well into 1967 we were still in what has been called the learning curve in Vietnam.

MACV was really only organized or activated, I believe, in 1965. The big buildup began in 1965 under General Westmoreland. The process of building up an intelligence organization in the field under military procedures, with the military's organizational approach, is something that has to be done in a certain way. When you are building a new organization you have to rely on inexperienced officers—as General Graham said, intelligence personnel working on 1-year terms. They were starting from scratch. In the Agency, as has been indicated here, we did not at that time have any official responsibility for military order of battle.

In 1966 we had very few people working on it. I think Mr. Colby gave you some figures on the buildup of the effort within CIA.

So, it would be normal. One does not have to think of conspiracies, or attempts to trick the evidence in this kind of situation, for the assessments of the enemy strength to be tentative. Many of the CIA memorandums which the committee has and as Paul Walsh said, which have been quoted, reflect the intelligence process.

If Mr. Colby said Sam Adams' position was the official CIA position, I disagree. I don't think he meant to say that—there was no official CIA estimate in 1966-67. We were putting out memorandums which said, "We think it should be more," or "There is new evidence coming in."

MACV was doing the same thing. They weren't doing it as fast or as well as we thought they should be doing it. I visited MACV in Saigon in the fall of 1966. My experience was not unique. As a professional intelligence officer, I had serious questions about the effectiveness of this new intelligence organization.

In the summer of 1967, as you know, a new director of J-2, MAVC, arrived on the scene and brought with him a bright young lieutenant colonel named Daniel Graham who set to work to revise the MACV estimates shop and from that point on, I think you can chart improvement in the quality of MACV's effort.

I always had problems with some of MACV's estimates, but I must recognize there was improvement as time went on.

So what we have in 1967, particularly, is a period of time when both CIA and MACV were searching, trying to refine their estimates and trying to get a grip on this problem, particularly on the irregular forces.

Now, to go on with the corruption charge, I am going to quote from my letter to Harpers magazine of July 1975, which was in response to Mr. Adams' article in the May issue. Just in case the staff of this committee has not brought this letter to your attention.

[Mr. Graham's letter and related correspondence are printed on pp. 2003-2004 of the appendixes.]

Mr. GRAHAM. I will skip some of the introduction which takes Harpers to task for running an article which had little foundation in fact and constituted an unjustified attack on precisely those elements in CIA, that is, the Directorate of Intelligence and the Office of National Estimates, that had worked consistently to put forth an honest and objective picture of Communist capabilities and determinations to prolong the war against the imposing military might assembled in the area by the U.S. Government.

Mr. Colby has described a vast outpouring of studies which the Agency was doing at that time on Communist logistics, the movement of North Vietnamese replacements and units into South Vietnam, the Communist transportation routes and the interdiction effort along the trails, and so on through a long list of subjects relating to Communist capabilities and their will to pursue the war.

The product of this work went to the President and the principal members of the National Security Council—Secretaries of State and Defense—in national intelligence estimates, memorandums, oral briefings, serial publications, and other means available to the Director of Central Intelligence.

By mid-1967, if not by mid-1966, the Agency had clearly passed the word that Communists manpower resources, particularly in North Vietnam, were adequate to sustain the war—which made the question of exact numbers in South Vietnam, in my mind, somewhat irrelevant since there was an ample manpower pool in North Vietnam—that their logistics system was bearing up under interdiction and that the Hanoi leadership was determined to protract the struggle.

I might say parenthetically that I believe it is now reliably known that, impromptu of the impact of these CIA studies, Secretary of Defense McNamara had privately decided by some time in mid-1967—I think this is in David Halberston's book, and in other places—that

the war was a mistake; and this led to his resignation in the spring of 1968.

Unfortunately, Sam Adams fails to take any of this into account and he conveys a misleading impression of a single-handed and lonely struggle to get the truth about the war to the White House against the massive opposition of countless knaves and cowards.

His charge that his research findings were suppressed does not stand up against a careful reading of his article. And his assumption that these findings were generally accepted within CIA is a distortion of the facts. His research subject, order-of-battle analysis, was arcane and complex. This is particularly the case when dealing with paramilitary or irregular forces that do not appear on the battlefield in regular units. Adams' methodology for estimating the strength of these irregular and paramilitary forces often raised more questions than it answered. He was dependent on captured Communist documents which meant that there were valid questions as to the timeliness and accuracy of the data as well as to the statistical significance of the available sample. Beyond the question of the numbers of Communist irregulars, was the larger question of their significance in terms of Communist military capabilities and staying power. There was always room for debate on these points, but it is clear that there was no neglect of the subject.

One paper which dealt with all these issues at length was the 1967 national intelligence estimate on Vietnam which Adams describes as a sellout to the generals on the order-of-battle figures. Apparently Adams was so obsessed with his own figures that he never read the entire paper. It included an extended discussion of order-of-battle methodology with particular attention to the problems of estimating strengths of paramilitary forces. It also provided a lengthy discussion of the various categories of Communist irregulars and the nature of their contribution to the total Communist effort—military, political and subversive. The paper as a whole gave a fair and objective picture of Communist strengths and weaknesses. I stand by it, and would welcome action by the CIA to release it to the general public.

The record of the Board of National Estimates from its establishment in 1950 until its demise in 1973 for independence of view and resistance to all departmental bias was well known in Washington. And this quality was highly valued by a succession of CIA directors from Gen. Bedell Smith to Richard Helms, even though the conclusions of the Board often put the Director in the delicate position of carrying unhappy tidings to unreceptive Presidents and other high-level policymakers. But the Board also had a clear responsibility on behalf of the Director of Central Intelligence to take due account of the views of all intelligence agencies which comprised the national intelligence community since national intelligence estimates were a community product.

Thus, it was necessary, not to make unprincipled compromises for lowest common denominator agreement, but to give due account to the judgments of other organizations particularly on subjects where CIA did not have the primary competence for research and analysis. This was certainly true in the case of Vietnamese Communist order of battle in 1967. CIA did not have primary responsibility, it had only a

limited research capability which enabled us to test, check, and challenge the findings of DIA and MACV, but we had no basis to summarily reject their findings as Adams seems to believe.

In my 25 years in CIA I never saw an analyst given more individual attention, more opportunities to present his evidence and state his case. Yet the impression in the Harpers article is that of a man whose work was suppressed and his views ignored. Many of us were sympathetic to Sam because of his diligence and persistence, but these traits were not uncommon among the many outstanding analysts at CIA during my 25 years in the Agency. Adams was only uncommon in his inability to see that he, like the rest of us, was occasionally fallible, and in his belief that all who disagreed with his findings had base and ulterior motives. That's the end of the letter.

I do not wish to leave the impression that there is no problem of policy intervention or departmental bias in the intelligence business and specifically in intelligence estimates.

I have lived with this problem all my professional life and do not expect it to go away. The Office of National Estimates and its Board of senior and highly experienced intelligence officers was uniquely designed—in terms of its organization and its role in the national estimates process—to deal with this problem. While it served the intelligence community as a whole, it answered to no one but the Director. It had no stake in any policy, in any budget, in any covert or overt operations.

While its individual members, like all flesh and blood humans, had their personal biases, the collective nature of the deliberations of the ONE staff and Board insured that these biases were challenged and canceled out. The fact that we were the target of constant sniping over the years from the Pentagon, State Department, distinguished journalists, the White House and NSC staff, Congress, and other components of CIA itself provided reassurance that we were doing our job.

Mr. MURPHY. You said by 1967 Secretary of Defense McNamara had become disillusioned with the war and, based on estimates, he then felt we weren't going to win it?

Mr. GRAHAM. I said that.

Mr. MURPHY. Did he convey these thoughts to you?

Mr. GRAHAM. Not to me, no, sir. I said I believed that is in Halberstom's book. That is not necessarily a reliable source.

Mr. MURPHY. Was there anyone else at that time besides McNamara saying the same thing?

Were there any other people in the Johnson administration at that time saying the same thing?

Mr. GRAHAM. I don't know.

Mr. MURPHY. You said there was criticism and discussion back and forth at the National Estimates Board. Who was arguing we were in over our heads and were up against an enemy we were underestimating?

Mr. GRAHAM. I was making a general statement about the role and function of the Office of National Estimates at that time. I wasn't referring specifically to any particular aspect.

Mr. MURPHY. You implied there were differences of opinion. Were these differences brought to the President's attention and Westmoreland's attention and to the attention of the public? That is the question.

Mr. GRAHAM. Differences within the Board of National Estimates?

Mr. MURPHY. Right.

Mr. GRAHAM. No, sir. You cannot have frank and open discussions if all differences are to be exposed. What counts is what is on paper.

Mr. MURPHY. Obviously if people were disagreeing with your estimates, it should have been brought to the attention of people that there were serious disagreements as to the strength of the enemy.

Mr. GRAHAM. If there were differences within the intelligence community with respect to any estimate, those differences certainly would be expressed, either in alternative paragraphs, in the main text, or in a footnote.

Mr. MURPHY. Were any expressed that way?

Mr. GRAHAM. Lots of differences.

Mr. DELLUMS. In the interest of time, I would like very much to have the gentleman move as swiftly as possible to conclude his testimony so we can proceed to whatever remaining question we might have.

Mr. GRAHAM. There is little use, of course, in moralizing about command or departmental bias. It will always exist and can only be coped with in the intelligence community by the maintenance of the authority of the Director of Central Intelligence. He, in turn, must provide for an organizational system that is resistant to both personal and departmental bias.

I am not confident that the present system of individual national intelligence officers is the best system to accomplish this. Lacking the professional backup staff of the old Office of National Estimates, the individual NIO's are more dependent on other offices and departments for their drafts, more vulnerable to influence and criticism from outside, and less subject to challenge by their fellow NIO's.

The present system also places an undue burden on the Director of Central Intelligence, though Mr. Colby appears to be willing to bear very heavy burdens. I don't know how he does it. I feel that these burdens are not necessary: he should be, but is not now, in a position to avail himself of the collective wisdom and experience of a group of senior estimators who have nothing else to do except concentrate on the estimates process.

I don't recommend a simple return to the old Office of National Estimates. However, I believe some of its strengths—collective responsibility and a professional staff—should be resurrected in order to insure higher quality papers and to strengthen the defense against policy and departmental bias.

Mr. MURPHY. I recall reading something to the effect that a few more months and the ARVN would be the best sustained force in the Far East, and a few weeks after the peace treaty they were running all over the place. I heard this from so-called experts. I am not trying to fix the blame. I also know that President Kennedy had misgivings about Vietnam as early as the early sixties. He said he was getting bum advice from the military. He said he was getting the same advice he got on the Bay of Pigs and was being conned by the whole thing.

The more people he put in, the more resistance he met.



My point, and the purpose of this committee, is to find out about and evaluate how best we can avoid making a mistake like this again.

One of the major things we must do is maintain a strong CIA, as opposed to having just one intelligence agency, say, in the military. I think it is very important that we have two independent intelligence agencies giving viewpoints and estimates.

Obviously we had intelligence work there and we still made mistakes. I am not trying to fix blame, but we are here to try to prevent its ever happening again. I think we should have a strong CIA, an independent CIA, that will come to the Congress and tell us when they think we are headed in the wrong direction.

Mr. GRAHAM. There is no problem that more concerns the intelligence community than the quality of its analysis.

Mr. MURPHY. But that quality doesn't mean a darned thing to the American people or the Congress if it stays in a room.

Mr. GRAHAM. I just say there is no lack of attention to that problem.

Mr. MURPHY. It is no good if it stays in a room and doesn't get to the people who make the decisions. It has to be brought here and dished out in frank terms so that we, the people charged with making the decisions, can make those decisions based on fact, not just on what they want to tell us.

Thank you.

Mr. DELLUMS. Mr. McClory.

Mr. McCLORY. I have no questions.

Mr. TREEN. Mr. Graham, just for the record, are you related to Gen. Daniel Graham in any way?

Mr. GRAHAM. Not in any way close enough to identify.

Mr. TREEN. Did you participate in the national intelligence estimate of November 1967?

Mr. GRAHAM. Yes, sir. I was the board member responsible for the production of that estimate.

Mr. TREEN. Does it represent your honest and sincere estimate at that time based upon available intelligence?

Mr. GRAHAM. It certainly does.

Mr. TREEN. Do you have information with regard to the opportunities afforded Mr. Adams to be heard with respect to his views within the Agency?

Mr. GRAHAM. Within the agency I have information, yes, sir. I know that within the Office of National Estimates Sam Adams was given several opportunities. I remember one day when we went on for at least 2 hours receiving a briefing from Sam on his numbers. I have no notes. I kept no diaries during my career. I have to speak entirely from memory but this was a discussion of the categories in the group under irregular forces. It may have included guerrillas.

He briefed us and we questioned him and discussed it for hours.

I might say I have known Sam for a long time. I was Deputy Director in the Office of Current Intelligence in 1964 and in effect discovered Sam and encouraged his career. I had respect for his energy. I thought he showed great promise and when I was moved over to the Office of National Estimates I personally gave Sam every opportunity to come in and brief us on each of his different assignments. When he was

studying Vietcong, when he was studying the so-called infiltrates, or convert agents, when he did that study he briefed us on that figure. I had strong disagreement with his methodology and his figures.

Mr. TREEN. Was he throttled in any way?

Mr. GRAHAM. He was throttled in no way. I have never seen anyone given more time and attention.

Mr. TREEN. I thank you for coming here.

I would like to go back to my questioning of Mr. Colby.

I wanted to get this on the record. A summary of what the national intelligence estimate showed was the makeup of the entire bundle of Communist forces as of November 1967.

There were, according to the report, 118,000 of the Regular Army.

Mr. COLBY. Main and local forces.

Mr. TREEN. 54,000 of the regular North Vietnamese Army and 64,000 Vietcong main and local forces.

Mr. COLBY. Right.

Mr. TREEN. Of the administrative services personnel there were 35,000 to 40,000?

Mr. COLBY. At least.

Mr. TREEN. Then you get to the guerrilla strength and you estimated the current strength of the guerrilla force at 70,000 to 90,000.

Mr. COLBY. What we would call the organized guerrillas.

Mr. TREEN. There was infrastructure consisting of what quantity?

Mr. COLBY. 75,000 to 85,000.

Mr. TREEN. All of the categories I just mentioned made up the categories of Communist forces that the military were saying constituted about 292,000; is that correct?

Mr. COLBY. It adds up to about 299 to 334.

Mr. TREEN. That is your figure, but these categories would equate with the categories the Defense Establishment was saying added up to 292.

Mr. COLBY. Right.

Mr. TREEN. So the maximum difference would be 30,000?

Mr. COLBY. Yes.

Mr. TREEN. In the subsequent paragraph and particularly the paragraphs numbered 32 through 36, you outlined and described the nature of other forces who were made up of people you had to consider when making an overall assessment of the situation in South Vietnam?

Mr. COLBY. Right.

Mr. TREEN. You said there were figures of 150,000 and that these are probably a little high. Apparently you didn't come to a definite figure or a guess at that time and I can understand why you didn't.

Mr. COLBY. We had part-time people and so forth who said an aggregate size was suggested in early 1966 as something on the order of 150. Since that time there had been certain pressures and we thought at the time that particular category had probably shrunk somewhat.

Mr. DELLUMS. You worked on the United States area bombing in Vietnam. In that instance, were you given correct figures by the U.S. 7th Air Force and would you please explain your answer?

Mr. GRAHAM. I said the agency worked on the results of United States aerial bombing.

Mr. DELLUMS. You did not work on that?

Mr. GRAHAM. Not directly. Mr. Walsh was the expert on that. I incorporated the results. I was interested in that work because it affected my overall assessment of the situation, but I don't pretend to be an expert.

Mr. DELLUMS. Do you have enough knowledge to indicate to us whether or not you were given accurate figures by the 7th Air Force?

Mr. GRAHAM. I would say the briefings which the 7th Air Force gave on the effects of their aerial interdiction efforts were not accepted as accurate by the CIA after careful analysis.

Mr. DELLUMS. I thank the gentleman.

This meeting stands in recess subject to the call of the Chair.

[Whereupon, at 4:40 p.m., the committee adjourned, to reconvene at the call of the Chair.]



## LEGAL ISSUES—FOREIGN INTELLIGENCE

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TUESDAY, DECEMBER 9, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, the Honorable Otis G. Pike (chairman) presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron Donner, general counsel; Jack Boos, counsel; Jeffrey R. Whieldon, counsel; Fred Kirschstein and Gregory G. Rushford, investigators.

Chairman PIKE. The committee will come to order.

Today the committee will begin to address some very major questions involving covert actions:

This morning we are going to discuss the legality of covert actions. This afternoon we are going to discuss, in executive session, the total record of covert actions.

The first witness this morning is a gentleman with whom we are all by now, I think, familiar—Mr. Mitchell Rogovin, who is the attorney for the Director of Central Intelligence.

Mr. Rogovin, you may proceed.

### STATEMENT OF MITCHELL ROGOVIN, SPECIAL COUNSEL TO THE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. ROGOVIN. By means of explicit, formal instructions to the Director of Central Intelligence, the President and the National Security Council have both directed that the Central Intelligence Agency assume responsibility for planning and conducting "covert action" in support of this country's foreign policy objectives.

The legal authority for the delegation of this responsibility to the CIA derives from three fundamental sources, each of which, in itself, constitutes a sufficient legal basis for the delegation.

The three fundamental sources are: The inherent constitutional power of the President with respect to the conduct of foreign affairs; the National Security Act of 1947; and the ratification, by Congress, of the CIA's authority to plan and conduct covert action.

The major portion of this memorandum is devoted to an analysis of these fundamental legal sources. Before proceeding with this analysis, however, it is useful to set forth a description of the kinds of activities which are comprehended by the term "covert action."

In general terms covert action means any clandestine activity designed to influence foreign governments, events, organizations or persons in support of U.S. foreign policy, conducted in such manner that the involvement of the U.S. Government is not apparent.

There are four general categories of covert action:

One, covert political action or operations designed to exercise influence on political situations in foreign countries--this could involve funding a political party or other group, or the use of an agent in a high government position to influence his government's domestic or foreign policy in a manner beneficial to the United States;

Two, covert propaganda or the covert use of foreign media assets including newspapers, magazines, radio, television, and so forth, to disseminate information supporting U.S. foreign policy or attack the policies and actions of foreign adversaries;

Three, intelligence deception operations involving the calculated feeding of information to a foreign government or foreign intelligence service for the purpose of influencing them to act or react in a manner favorable to our purpose; and

Four, covert paramilitary actions, the provision of covert military assistance and advice to foreign conventional and unconventional military forces or organizations.

As indicated, the legal authority for the delegation of covert action responsibility to the CIA by the President and the National Security Council derives from three fundamental sources: The inherent constitutional power of the President with respect to the conduct of foreign affairs; the National Security Act of 1947; and, the ratification, by Congress, of the CIA's authority to plan and conduct covert action.

The Supreme Court, the Congress, and the framers of the Constitution itself, have all recognized that the President possesses broad powers with respect to the conduct of foreign affairs. No less a constitutional authority than John Marshall, in an address to the House of Representatives, declared:

"The President is sole organ of the Nation in its external relations, and its sole representative with foreign nations."

The U.S. Senate, at an early date in its history, acknowledged the supremacy of the President with respect to foreign affairs, and recognized that he has broad powers in that area. In 1816, the Senate Foreign Relations Committee issued a report which concluded:

The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success.

Each of these statements was cited approvingly by the Supreme Court in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 311 (1936). In that case, the Court upheld the power of the President to proclaim it unlawful for U.S. citizens to supply arms to any of the belligerents in the Chaco war in South America. Although the Court could have rested its opinion solely on the grounds that the proclamation was issued pursuant to a joint resolution of Congress, it cited the statements of Marshall and the Senate Foreign Relations Committee excerpted above and spoke at length of the inherent constitutional powers of the President with respect to foreign affairs. Specifically, the Court spoke of:

The very delicate, plenary and exclusive power of the President as the sole organ of the Federal Government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress \* \* \* 299 U.S. at 320.

The Court has frequently reaffirmed the constitutional doctrine set forth in *Curtiss-Wright* that the President is supreme in the area of foreign affairs and that his powers in the area are “plenary.” For example, in *United States v. Pink*, 315 U.S. 203 (1942), a case in which the Court upheld the power of the President to recognize foreign governments and to conclude executive agreements with them which have the force of domestic law, the Court repeated that “the President \* \* \* is the ‘sole organ of the Federal Government in the field of international relations.’” 315 U.S. at 231.

Pursuant to this “historic conception of the powers and responsibilities of the President in the conduct of foreign affairs,” the Court has made it clear that the President may: Proclaim it unlawful for U.S. citizens to supply arms to foreign belligerents as it did in the *Curtiss-Wright* case; recognize foreign governments and conclude binding executive agreements with them as it did in the *Pink* case; use military force to protect U.S. citizens and property abroad in *re Neagle*, 135 U.S. 1, 64 (1890); and repel an armed attack by meeting “force with force,” as it did in the *Prize* cases.

The Court has never considered the precise question of whether the President may direct an agency of Government to perform covert action in foreign countries. However, in view of the Court’s recognition of the broad powers of the President with respect to the conduct of foreign affairs, and in view of the overwhelming historical precedents, it is clear that the President does have this power.

The historical precedents are every bit as compelling as the strong language used by the Supreme Court. Chief among these precedents is the longstanding practice whereby Presidents, acting on their own authority, have dispatched troops to foreign countries and authorized the use of military force short of war.

This practice was originated by Thomas Jefferson when he, on his own authority, sent the Navy to combat the Barbary pirates in an effort to protect American shipping.

By 1970 it was estimated that Presidents, on their own authority, had asserted the right to send troops abroad in “more than 125” instances differing widely in purpose and magnitude. Although the Constitution vests Congress with the power to “declare” war in article 1, section 8, clause 11, Presidents have, throughout history, insisted on and exercised their right to use force short of war. President Taft, who later served as Chief Justice of the Supreme Court, wrote:

The President is the Commander-in-Chief of the Army and Navy, and the militia when called into the service of the United States. Under this, he can order the Army and Navy anywhere he wills, if the appropriations furnish the means of transportation.

Recent examples of Presidential use of force short of war include: President Truman’s peacetime stationing of troops in Europe; President Eisenhower’s sending of Marines to Lebanon in 1958 to prevent foreign intervention in the affairs of that country; President Kennedy’s imposition of a naval quarantine on Cuba during the 1962 missile crisis, and his sending of planes to the Congo to evacuate civilians

in 1960; President Johnson's sending of troops to the Dominican Republic in 1965 to prevent formation of a hostile government; and, President Ford's use of force against Cambodia in 1975 to obtain the release of American seamen held by Khmer Rouge troops.

Congress has formally acknowledged that the President has inherent constitutional authority to use military force short of war. This acknowledgment is implicit in the War Powers Resolution, which became effective on November 7, 1973. In section 3 of that resolution, it is provided that:

The President in every possible instance shall consult with Congress before introducing U.S. Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until U.S. Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Chairman PIKE. Mr. Rogovin, may I interrupt you for just a moment? It is the intention of the Chair to continue the hearing through the quorum call, provided I can do it under our rules which require that at least one Member of the minority be present. If the Members of the minority feel that they must answer the quorum call, why, then, we will have to suspend.

Mr. McCLORY. I intend to remain.

Chairman PIKE. Fine. Go ahead, Mr. Rogovin.

Mr. ROGOVIN. Moreover, the resolution specifically states, in section 8(d) (1) that it is not intended in any way to "alter the constitutional authority" of the President.

Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties. \* \* \*

If the President has the power to dispatch troops to foreign countries and to use military force short of war—and the foregoing discussion clearly demonstrates that he does—then it would logically follow that he has the power to send civilian personnel to foreign countries to engage in covert action, since such action is rarely, if ever, as drastic as the use of military force.

In fact, the historical precedents in support of the President's power to conduct covert action in foreign countries are every bit as clear as those in support of his power to use military force.

Long before the CIA was established, Presidents, acting on their own authority, directed executive agents and executive agencies to perform what has come to be known as covert action.

Beginning with George Washington, almost every President has appointed special agents to engage in certain activities with, or against, foreign countries.

Although the activities conducted by these executive agents have included such overt assignments as negotiating treaties and conferring with wartime allies, they have frequently included covert action as well. In the first century of the Nation's existence alone, more than 400 such agents were appointed by the President.

Early examples of covert action performed by these agents are legion. The following three are typical: One, in 1843, President Tyler secretly dispatched an agent to Great Britain to meet privately with individual government and opposition leaders and to attempt to in-



fluence public opinion with respect to matters affecting the two countries, without ever disclosing that he was a representative of the U.S. Government; two, in 1845, when President Polk feared that Mexico was on the verge of ceding California to Great Britain, he secretly dispatched an agent to California for the purpose of "defeating any attempt which may be made by foreign governments to acquire a control over that country"; and three, in 1869, when the United States had territorial designs on central and western Canada, President Grant sent an agent to that area to foment sentiment for separation from Canada and union with the United States.

These examples show that the practice of appointment of special agents by the President for the purpose of conducting covert action in foreign countries is deeply rooted in our national history. The practice is so deeply rooted that historians have acknowledged the existence of a broad Presidential discretion with respect to appointment of such agents and assignments of functions to them.

According to the writings of Henry M. Wriston, for example:

Among all instruments available to the President in his conduct of foreign relations, none is more flexible than the use of personal representatives. He is free to employ officials of the Government or private citizens. He may give them such rank and title as seem appropriate to the tasks. \* \* \* He may send his agents to any place on earth that he thinks desirable and give them instructions either by word of mouth, or in writing, or through the Department of State, or in any other manner that seems to him fitted to the occasion. \* \* \*

Their missions may be secret, no one ever being informed of them. \* \* \* The President may meet their expenses and pay them such sums as he regards as reasonable. In this matter there is no check upon him except the availability of funds which has never proved an insoluble problem. In short, he is as nearly completely untrammelled as in any phase of his executive authority.

Individual agents, appointed by the President, were the exclusive means by which covert action was conducted prior to World War II.

During the war, the President created the Office of Strategic Services, and charged it with responsibility for secret subversive operations against the enemy, as well as general intelligence activities.

The OSS thus became the first governmental agency to be assigned the task of planning and conducting covert action. The OSS exercised this task until it was disbanded in September 1945. Then, in January 1946, President Truman, by Presidential directive, established the Central Intelligence Group.

Although a CIG was primarily a centralized intelligence organization, it was also assigned the function of conducting covert action.

What these historical precedents show is that, beginning long before the CIA was established, Presidents exercised their independent power to direct executive agents and executive agencies to perform covert action in foreign countries.

Consequently, when the CIA was established in 1947, and when, shortly thereafter, it was delegated the responsibility for covert action, there was no attempt by the President to assert or exercise any new or theretofore unrecognized executive authority; he was merely delegating to the CIA various executive functions which were previously assigned to ad-hoc special agents and other executive agencies.

In sum, the decisions of the Supreme Court, the actions of Congress, and the constitutional precedents developed by historical example clearly establish that the President has broad, inherent powers with

respect to foreign affairs, and that these powers include the authority to assign an executive agency, such as the CIA, the responsibility for planning and conducting covert action in support of this country's foreign policy objectives.

The National Security Act of 1947 provided for the establishment of the CIA. However, the idea of a central intelligence organization was actually conceived 3 years earlier.

In 1944, then Col. William J. Donovan, head of the wartime Office of Strategic Services, prepared a plan for President Roosevelt which called for the establishment of a centralized intelligence service. Donovan's plan envisioned an agency similar to his own OSS, which would procure intelligence by overt and covert means, and which would be responsible for "secret activities" such as "clandestine subversive operations."

The OSS itself, as indicated above, was disbanded at the close of World War II in September 1945. However, Donovan's plan, as it developed and was amended by the Joint Chiefs of Staff, reached fruition on January 22, 1946; on that date, President Truman, by Executive order, established the Central Intelligence Group or CIG. The CIG thus became the first peacetime central organization in American history devoted to intelligence matters. Heading the CIG was a Director of Central Intelligence, whose duties were to:

(a) Accomplish the correlation and evaluation of intelligence relating to the national security, and the appropriate dissemination within the Government of the resulting strategic and national intelligence policy. \* \* \*

(b) Plan for the coordination of such of the activities of the intelligence agencies of other departments as relate to the national security and recommend to the national intelligence authority, composed of the Secretaries of State, War, and Navy, and a personal representative of the President, the establishment of such overall policies and objectives as will assure the most effective accomplishment of the national intelligence mission.

(c) Perform, for the benefit of said intelligence agencies, such services of common concern as the national intelligence authority determines can be more effectively accomplished centrally.

(d) Finally, perform such other functions and duties related to intelligence affecting the national security as the President and the national intelligence authority may from time to time direct.

The National Security Act of 1947 called for the CIA to have the same powers and responsibilities as were accorded the CIG under the 1946 Presidential directive. Accordingly, when the House Committee on Expenditures in the Executive Departments held hearings on the 1947 act, it paid special attention to the broad authority delegated to the CIG by subsection (d).

During these hearings, for example, Representative Clarence Brown questioned Lt. Gen. Hoyt S. Vandenberg, Director of Central Intelligence, about the authority which subparagraph (d) conveyed:

The colloquy reads as follows:

Representative BROWN. This other section—that is, subparagraph (d)—was so broad that you could do about anything that you decided was either advantageous or beneficial, in your mind?

Lieutenant General VANDENBERG. Yes, sir.

Representative BROWN. In other words, if you decided you wanted to go into direct activities of any nature, almost, why, that could be done?

Lieutenant General VANDENBERG. Within the foreign intelligence field, if it was agreed upon by all of the three agencies concerned—that is, State, War, and Navy—the three agencies represented on the NIA.

A subsequent witness, Peter Visser, the draftsman of the Presidential directive establishing the CIG, recommended to the committee that it pass the act without authority for the CIA to perform any "other functions related to intelligence affecting the national security."

He called this provision a loophole because it enabled the President to direct the CIG to perform almost any operation. Various members of the committee discussed the provision with the witness.

It is significant, then, that when the bill was reported out, and when it was passed, it authorized the CIA to: "Perform such other functions and duties related to intelligence affecting the national security as the National Security Council (which replaced the NIA) may from time to time direct" (sec. 102(d)(5)).

In other words, the committee, with full knowledge of the broad implications of subparagraph (d) of the 1946 Presidential directive, conferred the identical powers and responsibilities on the CIA. This legislative history indicates that the committee, by including section 102(d)(5) in the final bill, intended that the CIA have the authority, subject to directions from the National Security Council, to conduct a broad range of direct operational assignments.

Throughout the 28-year history of the CIA, the Agency has reported its covert action programs to the appropriate members of its oversight subcommittees in both the House and Senate. Moreover, Congress, through the mechanisms it has established for funding the Agency, has continually appropriated funds to the Agency for these activities.

The history of CIA reporting of covert action programs and congressional appropriation dates back to 1948. In April 1948, when the House Armed Services Committee was considering the CIA Act (ultimately adopted in 1949), Director of Central Intelligence Hillenkoetter told the committee that the act was needed to enable the Agency to do research on and purchase among other things explosives, utilize and supply underground resistance movements in overrun countries, purchase printing presses for the use of agents, and do research for psychological warfare purposes.

Passage of the act clearly reflects Congress' determination that the Agency be able to conduct activities, such as covert action, similar to those conducted by the OSS; for example, the permanent appropriations language in the CIA act was modeled after the appropriations language for the OSS because of its flexibility and its provision for confidentiality of appropriations for secret operations.

The Justice Department, in a 1962 memorandum, discussed *supra*, provided the following description of the history of CIA reporting of its covert action programs to Congress, and congressional appropriation of funds for such programs:

Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both Houses, and to members of the Subcommittees of the Armed Services and Appropriations Committees of both Houses.

It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasionally other Members of Congress are briefed for specific purposes.

In effect, therefore, CIA has for many years had general funds approval from the Congress to carry on covert cold war activities.

The law is clear that, under these circumstances, Congress has effectively ratified the authority of the CIA to plan and conduct covert action under the direction of the President and the National Security Council. The leading case on this point is *Brooks v. Dewar*, 313 U.S. 354 (1941).

In that case, a 1934 act of Congress authorized the establishment of livestock grazing districts on certain federally-owned land, and charged the Secretary of the Interior with responsibility for administering and maintaining these districts; although the powers conferred on the Secretary were broad, the act did not explicitly authorize him to require persons wishing to utilize the land to purchase licenses. Nevertheless, the Secretary promulgated regulations which imposed a license requirement, and sought to bar respondents who had not purchased a license, from utilizing a particular grazing district.

In the Supreme Court, the Secretary argued that, even though the 1934 act did not explicitly authorize him to require users of Federal grazing lands to purchase licenses, his exercise of this authority was lawful because Congress, by its own actions, had ratified it.

The Secretary argued that, on several occasions, he fully informed the appropriate congressional committees that he had imposed a license requirement and that, in light of this information, Congress continually appropriated funds for the operation of the grazing district program. This, he contended, amounted to a ratification of his authority to institute the license requirement.

The Supreme Court agreed that Congress, by continuing to appropriate funds with knowledge of the Secretary's actions, ratified those actions.

The *Brooks* case requires the conclusion that Congress has ratified the CIA's authority to plan and conduct covert action. Relying on *Brooks*, the Justice Department reached precisely that conclusion: It said in the memorandum referred to before:

It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action, [citing] *Brooks v. Dewar*, 313 U.S. 354, 361; *Fleming v. Mohawk Co.*, 331 U.S. 111, 116; see also *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 293-294; *Power Reactor Co. v. Electricians*, 367 U.S. 396, 409. Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members, outlined above, are sufficient to render this principle applicable.

Recent legislative developments provide further support for the Justice Department's conclusion that Congress has ratified the CIA's authority to plan and conduct covert action.

In September and October of 1974, attempts were made in both the House and the Senate to limit the Agency's power to conduct covert action. These attempts were soundly defeated. In the House, the attempt took the form of a proposal by Representative Holtzman for a joint resolution amending the Supplemental Defense Appropriations Act as follows:

"After September 30, 1974, none of the funds appropriated under the joint resolution may be expended by the Central Intelligence Agency for the purpose of undermining or destabilizing the government of any foreign country."

This proposal was defeated by the House on September 30, 1974, by a vote of 291-108.

In the Senate, Senator Abourezk attempted to amend the Foreign Assistance Act of 1961 so that it would state:

(a) No funds made available under this or any other law may be used by any agency of the U.S. Government to carry out any activity within any foreign country which violates, or is intended to encourage the violation of, the laws of the United States or of such country.

(b) The provisions of this section shall not be construed to prohibit the use of such funds to carry out any activity necessary to the security of the United States which is intended solely to gather intelligence information. \* \* \*

This amendment was defeated by the Senate on October 2, 1974, by a vote of 68-17.

However, the following amendment to the Foreign Assistance Act of 1961 was enacted. It reads as follows:

**Sec. 662. Limitation on Intelligence Activities.**

(a) No funds appropriated under the authority of this or any other act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports in a timely fashion a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the U.S. Senate and the Committee on Foreign Affairs of the U.S. House of Representatives.

This provision prevents the CIA from engaging in any covert action unless and until the President makes a finding that such action is important to the national security. It also requires the President to report on the description and scope of the action "in a timely fashion" to the appropriate congressional committees.

The provision clearly implies that the CIA is authorized to plan and conduct covert action. Indeed, the Association of the Bar of the City of New York has concluded, in fact, that the provision serves as a "clear congressional authorization for the CIA to conduct covert activities."

In sum, the history of congressional action since 1947 makes it clear that Congress has both acknowledged and ratified the authority of the CIA to plan and conduct covert action.

In conclusion, I say that there is ample legal authority for the Central Intelligence Agency to plan and conduct covert action in foreign countries.

First, it is within the inherent constitutional authority of the President with respect to foreign affairs to delegate to an executive agency, such as the CIA, the responsibility for planning and conducting such activities; in fact, by means of various National Security Council directives, including National Security Decision Memorandum 40, issued by the President, he has lawfully delegated this responsibility to the CIA.

Second, the National Security Act of 1947 authorizes the CIA, at the direction of the National Security Council, to engage in covert action in foreign countries.

The legislative history of this statute, particularly in the House of Representatives, gives support to this conclusion.

Third, the 28-year history of congressional action with respect to the CIA clearly establishes that Congress has ratified the authority of the Agency to plan and conduct covert action.

Chairman PIKE. Thank you very much, Mr. Rogovin. I think the best way for us to proceed would be to have our other witnesses make their statements before we have questions from the committee. Then we will be free to question all of you.

Our next witness is Mr. Norman Dorsen, professor of law at the New York University Law School.

It is my understanding that you do not have a prepared statement.

**STATEMENT OF NORMAN DORSEN, PROFESSOR OF LAW, NEW YORK UNIVERSITY LAW SCHOOL**

Mr. DORSEN. That is true, Mr. Pike.

Chairman PIKE. In fairness to all of the witnesses, I recognize the advantage in going last. So, before the committee asks questions, I am going to let all the members of our panel comment on the statements made by the other people giving testimony.

Go right ahead.

Mr. DORSEN. Thank you very much, Mr. Chairman.

I don't have a prepared statement because of the short notice I had of this meeting. I would like to make two other preliminary comments, if I may.

First of all, I am general counsel to the American Civil Liberties Union. I am also president of the Society of American Law Teachers. But I am speaking here as an individual and not representing either of those groups.

Second, because of the timing problem, there is an unavoidable conflict with the Church committee. I am scheduled to testify in the FBI hearings at 11:15. I have already told the staff. I recognize there will be problems as far as the questioning is concerned. I hope to get most of my material in my statement. I have read Mr. Rogovin's statement quite carefully. He is, of course, an advocate representing one party to this very important constitutional debate.

I am prepared to say, in view of his extensive experience in Government and his general reputation, that that memorandum is about as good a brief as can be written on that side of the case.

Nevertheless, I think it is wholly inadequate. I think it is largely wrong. It will not be possible in a short statement to deal with all of the points that are necessary, but I urge the chairman, the senior minority member, and all the other members of the committee to deal with this subject very carefully.

I will get to the specifics of the argument in a moment. But basically it is a blueprint for untrammelled Government by the Presidency—not only untrammelled—secret Government by the Presidency but secret Government carried on without public debate—representing this country covertly in ways that I do not believe the Members of this Congress or even the responsible members of the executive branch would tolerate if they knew all the facts.

Now I am not speaking about any particular administration or individual. This country was dedicated to certain basic principles of public debate and the opportunity for citizens and their representatives, such as yourselves, to deal with problems in the open. Mr. Rogovin's approach is one I fear will lead us down a slope as slippery as the one we have just fallen down in the unfortunate events of the last few years.

Beyond the legal issue there are two principal points. One is: No matter what your thinking about the legal issues, even if I am completely wrong and Mr. Rogovin is completely right, that does not solve the problem that you gentlemen have and the country has. The question is: What is the way in which the foreign policy and the interests of this Government are going to be conducted? That is the issue ultimately that you must face.

The second point is that members of this committee, members of the Church committee, Members of both Houses of Congress, should not be apologetic, should not be timid, should not be meek about exercising their congressional responsibilities. Of course the President is the sole organ or agent of foreign policy. But there are many ways in which the Constitution permits, indeed requires, Members of Congress to act on behalf of the country in foreign affairs.

Congress formulates foreign policy legislation regarding commerce with foreign countries. Congress, alone, has the power to formulate the national policy to go to war or stay at peace. Congress has also determined and must determine U.S. neutrality in the wars of others. The war powers of Congress include the power to legislate and spend as necessary to wage war successfully, to prepare for war or to deter or defend against war, to deal with the consequences of war.

Under the general welfare clause, Congress can decide where, for what, how much, and on what conditions to spend for foreign aid and foreign affairs generally. The innumerable uses of the "necessary and proper" clause include many that formulate foreign policy. Since foreign policy and foreign relations require money, which only Congress can appropriate, Congress must have a voice in all foreign policy through the appropriations process. Congress unenumerated power to legislate on matters relating to nationhood and foreign affairs may reach far beyond regulation of immigration, nationality, and diplomacy. I don't even stress the Senate's power to confirm ambassadors and to ratify treaties.

Now, let's turn to the legal side of the issue. Before referring to the specific arguments that Mr. Rogovin mentioned, I would like to note briefly a statute that you may be familiar with. That is title 18, section 960, which says:

Whoever, within the United States, knowingly begins or sets foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than 3 years, or both.

There are several interpretations of that statute. The question is whether covert activity of the kind that this committee has uncovered, and other committees have uncovered, applies to this statute. There are several cases. Judge Augustus Hand, one of the most able judges in the Second Circuit, in a 1947 case concerning the use of spies, observed

the law could be violated—this law I quoted—even though the men do not fit the description of soldiers. I suggest that that statute be examined closely.

When one turns to the three principal arguments that Mr. Rogovin made, the first is the inherent power argument. What that means, translating it into the vernacular, in a realistic sense, is lawlessness. It basically means the President is not subject to the control of the country or of the Congress. Mr. Rogovin stresses the *Curtiss-Wright* case. But he recognizes, I believe, that all the language he relies on was dictum because in that case there was a joint resolution of Congress authorizing the activity that was under scrutiny.

In addition, later decisions of the Supreme Court, including at least one unanimous decision, severely undercut the doctrine of inherent power.

Perhaps the most important was *Youngstown Sheet & Tube*, which involved the governmental taking of the steel companies during the Korean war. President Truman authorized it, saying it was necessary to run the steel companies in order to protect our interests during the Korean war. I don't think anybody doubted that steel was very important; I don't think Mr. Truman's severest critics doubted it. And yet the Supreme Court by a substantial vote rejected his "inherent power" to take over those steel companies. Some of our most revered jurists—Black, Douglas, Frankfurter, and Jackson, men of considerably different legal philosophies—all said that this country must sink or swim, even during hostilities, on the will of the people and the representatives of the people, which you are.

There is a second aspect to that case. Even if one assumes that the President, as *Curtiss-Wright* admittedly did suggest, has some independent authority in the area of foreign affairs, the most profound opinion in the *Youngstown* case—the one by Justice Jackson—pointed out that that authority is at the weakest when Congress decides against the exercises of that power. Specifically, what he said was that if Congress should enact a statute saying it does not want the President to act in a certain way—even though the President may have some independent authority of the kind that Mr. Rogovin suggests—that authority is severely diminished if the Congress says so.

That is why the question is in your hands. Not just for President Ford, not just for the gentleman who will be elected in the fall of 1976, but for the people who will be elected in 1986 and 1996. You have to set down rules which do not permit the kind of vague, uncertain, uninformed, and ultimately lawless authority that some of the intelligence agencies have operated under.

There are other cases. In a unanimous decision in *United States v. U.S. District Court* the Supreme Court rejected the idea of an implied or inherent power to wiretap domestic groups in order to aid our national security. That recent decision, in my judgment, largely undercuts the dictum in *Curtiss-Wright*.

Additionally, in both the Pentagon Papers case and *United States v. Nixon*, the President was claiming an inherent authority. Regarding the latter, the words "executive privilege" are not contained in the Constitution. The Court recognized that there was such a doctrine in certain circumstances, but unanimously rejected its application.



What all this tells me is that as a constitutional doctrine the idea of inherent power is very weak indeed, and one that the Supreme Court in its two most recent expressions has unanimously rejected.

When one turns to the 1947 statute and the history of that statute, it is not the kind of issue one can deal with in a public discussion. It requires a careful, analytic, and thorough look at the legislative history. I did take an unthorough, hopefully analytic, but certainly not comprehensive look at that legislative history. All I can say is that the three pages Mr. Rogovin has set forth are incomplete; they do not tell the whole story. They do not give the kind of backing for the power that he suggests the Central Intelligence Agency has.

I urge the committee to do a thorough study of the history of that statute.

When one turns to ratification and the doctrine of *Brooks v. Dewar*: Mr. Rogovin says this is the leading case on ratification. If it is, it is perhaps because it is the only case. It involved a situation very far afield from the situation we are in now. The Congress and the people have not had access to the information upon which they could ratify the actions of the Central Intelligence Agency. A basic doctrine regarding ratification is that people must ratify with full knowledge. It is true that some Members of Congress may have known certain things and perhaps a few Members of Congress may have known everything, although I would be inclined to doubt that as a matter of fact. But it is certainly clear that the public did not know and the Congress as a whole did not know. It seems to me quite futile to regard this a ratification process, fully apart from the question of whether the *Brooks* case itself is good law, which I doubt very seriously at the present time.

In short, it would take a lot more than *Brooks v. Dewar* to convince me the Congress ratified a program of assassination and violence. I don't believe the Congress enacted laws in that way and I don't believe your predecessors enacted laws in that way.

There are other legal arguments that are made, such as "The Congress refused to pass certain limitations on the authority of the Central Intelligence Agency." It is hornbook law that Congress does not make law by failing to make law. It makes law by having both Houses of Congress pass a statute and having it signed by the President, and, in the event of a veto, having it over-ridden by two-thirds of both Houses. Congress does not make authority by refusing to act.

Turning to history, it would be superfluous for me to review that which is undoubtedly very much in your own minds and is thoroughly available in the literature. What was the purpose of the Constitution? What were the fears of the persons who framed, drafted, and ratified the Constitution? They were not afraid of congressional government. They were not afraid of the elected representatives of the people. They were afraid of the king. They were afraid of an all-powerful Executive. What issue in current public debate is more consonant with those fears than the idea that an agency of the President, covertly—without public debate, without the knowledge of the elected Representatives of the people—can do the kinds of things that have been done in the name of each of us?

It is said that threats are perceived to our Government and to the American polity. We have always had this threat. In *Youngstown Sheet & Tube*, Justice Black and Justice Jackson said:

Whatever the risks, whatever the fears, the principle of the Constitution is that we will sink or swim with an elected form of government. We will sink or swim with public knowledge and public debate. That we have not had, gentlemen, in this area.

With respect to the arguments that Mr. Rogovin may very ably be making on behalf of his client, I must say in candor it is doing no service to press the point that this Congress, by some implied ratification, has authorized acts which I, at least, was not brought up to regard within the framework of governmental activity by the United States.

Now I would not be prepared to say—changing the line for a moment—that there are no cases where covert activity has not worked, that there are no cases where undercover action by spies have not been helpful to the United States. I do not know of any and I must say with all respect to the Director and staff of the Central Intelligence Agency that the status of America in the world, the power of America in the world, since 1947 has not increased. There are many reasons for that. But it is clear we have suffered many defeats in foreign policy—many historic and important defeats. We have done this while the Central Intelligence Agency and perhaps other branches of Government have been operating covertly.

I am not privy to classified information. I did testify before the Rockefeller Commission and had a long discussion with the Commission on this point; but I was not given the files. But even if it is shown that there is some advantage in covert activities in foreign policy, the question is: Is it worth it? Is it worth it in terms of the secrecy and the lying?

Even President Eisenhower was forced to humiliate himself by lying about the U-2 incident. I am sure that must have been a very bitter pill for him to swallow. We have no public control, we have no public debate. At the bottom of all this, perhaps, at least for one who was not privy to the information that you gentlemen are privy to, is a question of courage. It is a question, ultimately of what we are prepared to live by and what risks we are prepared to take.

I can think of no better statement to close on than one Justice Brandeis made in a case called *Whitney v. California* in 1927. He said:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They recognized the risks to which all human institutions are subject.

Able, honorable men, such as Mr. Rogovin, are presenting arguments in favor of a position that in the long run can bring us nothing but sadness and disaster. I urge this committee, both on the law and in terms of policy, to reject that view.

[Mr. Johnson applauds.]

Chairman PIKE. Thank you very much, Mr. Dorsen.

Obviously your views meet with some approval on the committee.

Mr. DORSEN. That is a very small vote so far.

Chairman PIKE. Some of us are trying not to appear to prejudge.

In view of the fact that you have to leave at 11:15, I think I would like at this time to invite both Mr. Gerhard Casper, professor of law at the University of Chicago Law School, and Mr. Rogovin to comment on what you have said. Otherwise we could not have the interplay which I would like to get.

Mr. Casper, would you care to go first?

Mr. CASPER. Mr. Chairman, I will yield to Mr. Rogovin because he was the most direct victim of Mr. Dorsen's comments.

Mr. ROGOVIN. The peroration brings to mind the burial of Julius Caesar, for he, too, was an honorable man.

I think that Professor Dorsen has taken this opportunity to bifurcate the issue and has come down strongly in disfavor toward covert action. He is certainly entitled to that view, a view that is shared by others in this country. But that was not my understanding of the purpose of today's hearing. The response that I made with respect to the issue of whether there is a legal justification for covert action was a historical response, fully recognizing that the Congress has authority to speak in the area. Many of the issues that Professor Dorsen raised can be rebutted in finite form but I would rather go to the broader features of the issues.

I agree that the Congress should not be meek in asserting its responsibility in the areas of foreign affairs. We are talking about an area, however, that does relate to secrecy. We are discussing activities that, if made public only to the 214 million people of this country, who alone were aware of it, then we could go forward with some knowledge that we were not tipping our hand. But because the activities are such that secrecy is required, it is, I believe, the responsibility of the Congress to so organize itself so that it can receive this information and coordinate with the executive branch with respect to the desirability of these programs. Congress certainly does have a role, and nothing that I have said was intended to undercut that role.

The history in the past perhaps has been one where Congress, by its own choosing, through its own mechanisms, has restricted the number of its Members who were aware of the activities of the CIA. This is not the CIA's doing. If the CIA is advised it has to brief a larger number of Congressmen and consult with a larger group, it of course will do so. So I think the question of what Congress does in the future is not in any fashion limited to what has been done in the past.

The issues that I addressed were the questions of whether there was a legal basis, historically, for what has taken place in the past. I think the inherent argument exists. There has been an awful lot of rhetoric and one can cite Richard Nixon to demonstrate the potential for lawlessness.

That has not, however, been the history of our country. One would hope that Presidents in the future will have learned the bitter lesson of the Presidency of Richard Nixon and the arguments with respect to lawlessness and would work with the coordinate branches of Government.

That type of argument is simply one of noise. The *Youngstown* case, for example, was a case dealing with a domestic seizure of a domestic industry. The case certainly was rightly decided. The case

doesn't say anything about how the United States will conduct its foreign intelligence. That is the issue before this committee.

It would be nice if we could lay down our foreign intelligence and our covert activities and our clandestine activities. It would be nice if other countries throughout the world would similarly do so. But that is not the world that we are living in.

We must accept the 20th century as given. We are dealing within the 20th century and we are currently determining whether there is room, within our Constitution and within the laws that Congress has passed and will pass, to determine whether an intelligence agency can operate within that Constitution and within those laws.

Chairman PIKE. Professor Dorsen, would you care to respond?

Mr. DORSEN. I will certainly wait until Professor Casper finishes and then I will have a couple of brief comments.

Chairman PIKE. Professor Casper, please proceed.

Mr. CASPER. My disagreements with Professor Dorsen's are so minor that I don't believe it is worthwhile to recite them now. I will apprise you of them later on.

Mr. DORSEN. In that case, may I make two brief points on Mr. Rogovin's comments? Then I will have to go to the Senate side.

Chairman PIKE. It is rare that we get a witness before Senator Church.

Mr. DORSEN. The negotiations there were more intricate than the President conducted in China.

Mr. ROGOVIN. Hopefully more fruitful.

Chairman PIKE. Mr. Rogovin, did I hear you right? Did I hear you say "more fruitful"?

Mr. ROGOVIN. No, sir. That was covert action on the part of the audience.

Mr. DORSEN. I do not think it is entirely fair to say the issue is bifurcated when one separates "the law" from the nature of the activity.

When one is arguing for an inherent power, one must look very closely at the nature of the activity for which the inherent power is claimed. Therefore, in the *Youngstown Sheet & Tube* case, in the wiretapping case, in *United States v. Nixon*, the executive privilege case, the Court gave very close scrutiny to what was being done in order to determine whether the President had the power to do it. That is why I emphasized the nature of the activity. I do not think one can avoid that.

Second, in terms of the historical record, in *Youngstown Sheet & Tube* the dissenting opinion of the Chief Justice, Mr. Vinson, recounted at least 20 examples of situations in this historical record where prior Presidents had either used force against American private property or had seized private property, claiming that there was an inherent right to do so. He argued that these actions showed that with the acquiescence of Congress, the President had the power to do the kind of thing that Mr. Truman was claiming in *Youngstown*.

The six-man majority of the Court rejected that, saying that unreviewed assertions of power by the Executive cannot be used as a bootstrap to establish Executive power. Those examples occurred, but in most of them there was no way of getting judicial review.

The historical record was full of cases of that kind. But they did not suffice to help Mr. Truman, and I am very pleased to see that Mr. Rogovin seems to say that that case was correctly decided.

Chairman PIKE. Thank you very much. Mr. McClory?

Mr. McCLORY. Before Mr. Dorsen goes, can we ask him any questions or make any comments? I think that the general realm of covert activities is something that none of us likes, but I am certainly aware of the fact that the Soviets operate substantial espionage activities. From my reading of the literature on the subject and my general knowledge, if we did not have any covert activities and we had no counter-espionage against the KGB, for instance—here and in many, many other countries—we would certainly be doing a disservice to our Nation and subverting the very liberties that we cherish.

I would just like to say that in addition to the enjoyment of individual freedom here, it seems to me it is a legitimate policy of our Nation to try—through every means possible, including covert activities—to see that freedom-loving people in other countries don't lose all of their rights and privileges because of Communist subversion.

We are not talking about assassinations, which is what you talked about. We are talking about legitimate counterespionage which, it seems to me, we have always practiced, and covert efforts in other countries in behalf of human freedom. Now that is not inconsistent with our Nation's policy, is it?

Mr. DORSEN. That is a good short statement of a position that is widely accepted. But I think that there are some problems with it.

First of all, when you talk about protecting the freedom of people in other countries, I am not sure how free the people are in Chile. I am not sure how free the people are in other countries where we have intervened in order "to protect freedom." This is not precisely in the realm of my experience, but I think it is a little too easy to talk about freedom-loving peoples as "our people" and the other peoples as being without freedom.

Second, there is the point that covert activity is necessary to protect our freedom.

Mr. McCLORY. To counteract other covert actions.

Mr. DORSEN. Yes; that is the argument that is made. I already have said that the record does not show great success on the part of our covert operators, sad to say. But apart from that, I think the burden of proof is very heavy on those who make the assertions that you made. It has not been demonstrated. It has not been proven that these activities—and I use assassination as one example, but there are burglaries and God knows what else—have been shown to be effective.

It is very easy to say, "They do it, therefore we have to do it." I do not accept that as a truism or as a proven syllogism. In certain cases it may be true. But I think it is too easy to accept it as a given rather than something that has to be proven.

Mr. McCLORY. We don't hear about the successes, but I have the feeling that the success stories are in the hundreds as opposed to the failures, which you can probably count on two hands.

Chairman PIKE. Now, in fairness to Professor Casper, rather than letting the other members question—and frankly I have some questions I would like to ask—we'll let you go ahead, Mr. Casper.

**STATEMENT OF GERHARD CASPER, PROFESSOR OF LAW,  
UNIVERSITY OF CHICAGO LAW SCHOOL**

Mr. CASPER. Thank you very much. In response to Mr. McClory's remarks I should like to say that I will address myself primarily to the legal authority of the President to conduct covert activities, and not to the question of whether we should engage in any covert activities at all. I consider that a question of public morality, rather than a question of constitutional law. Nevertheless I shall be glad, of course, to answer questions about the latter point.

I have a very short statement which I shall read and then I should like to respond to a few points made by Mr. Rogovin.

You have requested my opinion concerning the legal authority for so-called foreign covert activities. I shall use the term "covert activities" to designate the pursuit of foreign policy by secret activities which are primarily aimed at overthrowing a foreign government.

The public record suggests that such activities, undertaken on behalf of the United States and other countries, range from "mere" propaganda efforts to the use of violent means, including the employment of warlike force, as for instance, in the Bay of Pigs.

Most covert activities may be conceptualized as interventions from within: A foreign country makes use of means which the target government would probably label as ranging from the seditious to the rebellious if they were employed by domestic opposition groups acting in isolation.

Since I have no expertise in international law, I shall restrict my subsequent comments to American law. Likewise, I shall not consider whether some of these activities fall within the reach of Federal or State criminal law. Before discussing constitutional questions, I shall take a brief look at statutory authority.

An examination of the National Security Act leads me to the conclusion that the legislation is exclusively concerned with better formulation and coordination of national security policy. It does not address the propriety of covert activities.

The Central Intelligence Act likewise focuses on the coordination of intelligence activities, and charges the Central Intelligence Agency with performing "such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct" (50 U.S.C. 403 (d) (5)).

Now, if I may digress for a second, Mr. Rogovin referred to various exchanges in committee at the time the legislation was drafted. Everybody who has to interpret legislative history knows how difficult it is and indeed how dangerous it is.

Mr. Rogovin referred to a most obscure exchange in committee. If you turn to page 14 of his statement, he quotes Representative Brown as saying the following:

In other words, if you decided you wanted to go into direct activities of any nature, almost, why, that could be done?

Then Lieutenant General Vandenberg responded to that. Mr. Rogovin's interpretation, to a large extent, depends upon what was meant by "direct activities." Of course, nobody explained that term. Mr. Rogovin goes on to say that the committee subscribed to the view

that direct activities meant covert activities and, therefore, authorized covert activities. Indeed, he concludes—

In other words the committee, with full knowledge of the broad implications, conferred the identical powers and responsibilities on the CIA.

As far as I know, Mr. Chairman and members of this committee, and with all due respect to congressional committees, committees have no authority to confer any power on anybody.

Chairman PIKE. There is very little respect for congressional committees.

Mr. CASPER. I have very great respect but, nevertheless, it is the Congress that confers powers.

The question we have to answer is whether the Congress in enacting the particular language I quoted—which referred to matters “related to intelligence”—did mean to cover covert activities. If it did, it most certainly did not let on. This amounts, almost, then, to an instance of secret legislation which I find to be a most dubious exercise of legislative powers on the part of the Congress.

As far as I know, there are no reasons to assume that at the time of enactment in 1947 the term “intelligence” was used by the Congress to include covert activities. I shall later discuss questions raised by the Foreign Assistance Act of 1974.

While neither section 402 nor section 403 can be viewed as legal authority for covert activities, it is also clear that they do not attempt to restrict such activities if they were authorized, for instance, by inherent Presidential powers.

There is a problem, though, concerning the use of the Central Intelligence Agency for the execution of Presidential policies, since the Agency is a congressionally established one.

One might, therefore, argue that the President may not employ it for purposes not specifically mentioned in the Central Intelligence Act, though such purposes may be otherwise legitimate. As a matter of first impression, it seems to me that the Central Intelligence Agency differs from the “independent agencies” in that it is thoroughly attached to the executive branch by means of the National Security Council “direction” under which it operates.

Therefore, it seems to me that the President is not clearly barred from making use of the Central Intelligence Agency for the execution of national security policies which he is constitutionally empowered to pursue. The matter is, however, not free from doubt and is perhaps deserving of further clarification.

I turn to the question of whether there is inherent Presidential power to engage in covert activities. An abstract answer is not easy to give, in view of the fact that even the narrow definition of covert activities with which I started covers mere propaganda. To the extent that covert activities are related to major foreign policy decisions—like participation in the overthrow of a foreign government, with far-reaching consequences for the foreign policy, national security, and international position of the United States—it must be kept in mind that the constitutional scheme for the conduct of foreign and defense policy is one of shared responsibilities and checks and balances.

This calls for coordination—not just cooperation—between the executive and the legislative branches. Seen in this light, it seems to me

that all inquiry has to start from the premise that unauthorized and unreported covert activities are not in accord with the spirit and the letter of the Constitution. This is not to say that one cannot conceive of rare emergency-type situations where the President will take the responsibility for independent action.

In view of these considerations, I come to the conclusion that such past covert activities as the Bay of Pigs fall into the unauthorized category. As concerns possible future activities of the covert type, one may wonder whether they are now authorized under section 662 of the Foreign Assistance Act of 1974. While section 662 refers only to "intelligence activities," the context in which it was enacted suggests that the language which speaks of "activities other than those intended solely for obtaining necessary intelligence" is a euphemism for covert activities.

If this were so, then covert activities are now, for the first time, expressly authorized, provided that two statutory conditions are met: (1) a Presidential finding of importance to the national security; and (2) timely reporting by the President to the appropriate congressional committees.

Mr. Chairman, this is about the only point on which I agree with Mr. Rogovin; otherwise our disagreements could not be more complete. Mr. Rogovin warms up about every old chestnut that administrations have ever relied on in disputes with the Congress. If I had any authority to recommend legislation to you, I would recommend that you pass an act which prohibits the citation of *Curtiss-Wright* in any congressional committee. But before I turn to *Curtiss-Wright*—the most abused case in the history of the Supreme Court—I have a minor point.

Mr. Rogovin refers to a statement by John Marshall, when he was a Member of the House of Representatives, which reads: "The President is the sole organ of the Nation in its external relations and its sole representative with foreign nations."

Mr. Chairman, and members of the committee, one should despair about how much historical scholarship is wasted. It has since been clearly demonstrated that Mr. Marshall made these remarks in a context which forces one to the conclusion that he took almost the opposite position on congressional power to the one which is attributed to him.

May I perhaps, if you bear with me, explain the context in which the statement appeared. After having said what I just quoted, and what Mr. Rogovin used of Mr. Marshall's statement in the Congress, John Marshall continued.

First, may I just remind you for a second that the issue here was whether President Adams had acted properly in extraditing a British subject to England on a murder charge pursuant to the Jay Treaty of 1795.

Mr. Marshall had this to say:

[The President]—is charged to execute the laws. The treaty is declared to be law. He must then execute a treaty where he and he alone possesses the means of executing it.

Thus it was a question of the Presidential execution of law—that is, treaty law in this instance—and Marshall went on as follows:

The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution.



Since the person is named to conduct the foreign intercourse and to take care that the laws be faithfully executed, the means by which it is to be performed, the forces of the nation are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been described?

After this Marshall continued—and I hope due emphasis is given to this:

Congress unquestionably may prescribe the mode and Congress may divulge on others the whole execution of the contract, but until this be done it seems the duty of the executive department to execute the contract [that is, the treaty] by any means it possesses.

Thus Marshall, I assume referring to the necessary and proper clause of article I, emphatically stated that Congress had a role even in foreign policy matters.

That was my first disagreement with Mr. Rogovin, and I wish the executive branch would from now on bury this particular quotation, though I am not very hopeful.

The second disagreement comes as far as the *Curtiss-Wright* case is concerned.

Mr. Rogovin refers to the *Curtiss-Wright* case by saying the following, and I am on page 4 of his statement:

In that case—*United States v. Curtiss-Wright*—the Court upheld the power of the President to proclaim it unlawful for U.S. citizens to supply arms to any of the belligerents in the Chaco war in South America. Although the Court could have rested its opinion solely on the grounds that the proclamation was issued pursuant to a joint resolution of Congress, it cited the statements of Marshall and the Senate Foreign Relations Committee \* \* \*

and so on.

Mr. Chairman and members of the committee, Mr. Rogovin tries to make *Curtiss-Wright* an authoritative case by pointing out that Mr. Justice Sutherland said more in this case than was strictly required by the case because the case involved a narrow delegation of authority by the Congress to the President.

I think this flies in the face of all I have ever learned in law school about the use of precedent. It seems to me a precedent is authoritative only to the extent to which it responds to the facts before the court, and, as Mr. Dorsen said, Mr. Justice Sutherland's flights of fancy were exclusively dicta. I would like to remind the committee that Mr. Justice Sutherland made use of the *Curtiss-Wright* case to incorporate into law a book he had written many years prior about Presidential power. Very few of us academicians are ever in that fortunate a position. He was, and he made full use of it.

Mr. Rogovin went on to say that the Court has frequently reasserted *Curtiss-Wright*, and I think Mr. Rogovin shares with Mr. Dorsen a fascination with the Supreme Court and its pronouncements in this area. Yet reliance on the Supreme Court here is a somewhat dangerous course because it is in the very nature of foreign affairs and defense matters that most of these issues do not get frequently litigated.

Until recently, no Federal court gave you standing to go into court and have the courts determine the constitutional distribution of powers. Also, often you are unwilling to go to the courts, and rightly so. The courts' exposure to foreign affairs has been haphazard and has led to very few pronouncements. I think we are on much more solid ground in

the area of foreign affairs and defense matters if we go straight to the Constitution and look at the constitutional distribution of powers. If the committee will indulge me for a few seconds, I should like just to do a very simple exercise which is normally attacked by members of the executive branch as being "fundamentalist," I gladly confess that I am a fundamentalist when it comes to the Constitution. The Constitution assigned powers concerning foreign relations in the following manner:

First of all, Presidential powers. It confers upon the President the power to make treaties; Senate consent required. It confers on the President the power to appoint envoys; Senate consent is again required. It confers on the President the power to receive envoys, and it confers upon the President the Executive power.

Now, there has been much dispute as far as the vesting clause of article II is concerned, which, as you recall, says the Executive power shall be vested in the President. It is somewhat different from the vesting clause in article I, which says, "All legislative powers herein granted shall be vested in a Congress." And it has been argued on the basis of the difference in wording that more than the powers expressly granted were vested in the President; the Executive power, whatever that may comprise.

I think the best historical scholarship shows that there is no proof of this at all. Absent a clear indication that this was the intent of the framers, I think we are far better off to assume that the framers did with respect to Executive power what they did with respect to all other powers, and that is to confer only those powers they expressly mentioned.

Now, when we return to powers concerning foreign relations, there are Senate powers. I have already mentioned them: The power to advise on and consent to treaties and the power to advise on and consent to the appointments of envoys. And then there are congressional powers: The Congress has the power to regulate foreign commerce, a foreign policy matter of the first importance, in particular at the time when the Constitution was adopted.

Much of foreign policy consisted of commercial regulation. The power over duties, also deeply involved with foreign policy, was conferred on the Congress, as was the power to define and punish piracies and felonies committed on the high seas for criminal law purposes.

When we return to powers concerning defense, there are, first of all, the Presidential powers: the power of the President as Commander in Chief, and, second, the power to repel sudden attacks on the United States or its Armed Forces. The latter is not mentioned in the constitutional text, but it is indisputably granted. I think everybody is agreed on this point.

And there are then congressional powers: the power to raise and support armies limited in terms of appropriation to a period of 2 years. Contrary to Mr. Dorsen's opinion, I think it is fair to say that the framers, while they most certainly did not place particular trust in the President, distrusted everybody—the Congress, the President, and even the judiciary. That is why we have a system of checks and balances. They distrusted Congress in that they limited appropriations for an Army to 2 years because they were fearful of a standing Army.

There is congressional power to provide and maintain the Navy.

There is a power to make rules for the Government, and regulation of the land and naval forces. You have the power to provide for calling forth the militia to repel invasion; power to suspend the right of habeas corpus. Whether the latter was placed in the Congress or the President has been a matter of dispute but I won't go into that. Then there is the power to declare war. I think in all fairness one has to look at the Constitution and see that almost all these powers are shared powers.

Now, Mr. Rogovin argued that the President may do many things on either constitutional or legislative authority, and that therefore it follows that he has the independent authority to engage in covert activities.

I don't think that follows at all because, in those areas where the President openly takes certain actions, he is accountable to the Congress and to the electorate. When he engages in covert activity, he is not accountable to anyone, as the history of the postwar period has shown. And that makes it indispensable, I think, that the Congress assert its authority and exercise its duty to oversee the Presidential approval of covert activities.

Thank you.

Chairman PIKE. Thank you very much.

The committee will now proceed under the 5-minute rule.

Mr. Rogovin, under the legal authority which you have cited, do you see any legal inhibition on the CIA participating in assassinations in other countries?

Mr. ROGOVIN. I would have to guess at the definition of the term. You start with the question of what is an assassination. It is a term that has been publicly bandied about for quite some time these last months—

Chairman PIKE. Please don't use all my 5 minutes in your comments. Define assassination the way you want to, and then tell me whether, in your judgment, there is any legal prohibition on the CIA conducting assassinations.

Mr. ROGOVIN. I have great difficulty, Mr. Chairman, being able to point with any certainty to a prohibition placed on the Agency in the structure of law that currently exists.)

Chairman PIKE. In other words, you do not find any legal prohibition against assassinations.

Now, let's talk about the kind of operation which was conducted by the CIA in Laos, under which an entire military action was conducted without the knowledge of the American people.

Do you find any legal prohibition against that?

Mr. ROGOVIN. Currently there would be in the War Powers Act.

Chairman PIKE. Now, the War Powers Act and all of the laws which you have cited under the concept of congressional approval—I have forgotten the term for your third concept—require that Congress be given all of the facts in order to ratify these actions.

Do you find any legal justification for denying facts to Congress?

Mr. ROGOVIN. The Congress chooses to organize itself as it so desires. If the Congress were to set up one committee with oversight responsibility for the Central Intelligence Agency—

Chairman PIKE. But you understand my question, Mr. Rogovin: How can Congress ratify acts that it isn't told about?

Mr. ROGOVIN. If that committee responsible for the oversight of the Central Intelligence Agency is advised and that committee chooses, through its leadership or through whatever judgment it makes, not to advise the rest of Congress, that, Mr. Chairman, would seem to be the problem of Congress as to how it organized itself.

Chairman PIKE. So, in your judgment the concept of congressional ratification is a valid concept, even though perhaps only one subcommittee of one committee of Congress is advised as to the truth and all of the rest of Congress is misled as to the facts?

Mr. ROGOVIN. Currently, in light of section 662 of the Foreign Assistance Act, all of the appropriate committees of Congress would be advised of such covert activity. It wouldn't be limited to one subcommittee of the Congress.

Chairman PIKE. Now, suppose Congress was told, in broad and bland terms, that there was to be a covert action in some country but was not really told that the action would involve the killing of people in that country. Would that, in your judgment, comply with the law?

Mr. ROGOVIN. Initially, I would say it would be a default on the part of the Congress for allowing such a briefing to take place. I don't believe that bland and general language should be accepted by the Congress under the terms of section 662 of the Foreign Assistance Act. Therefore, I think that the executive branch is to be chastised for coming in with such language and the Congress, or that committee, is certainly to be chastised for accepting it.

Chairman PIKE. My time has expired. Mr. McClory.

Mr. MCCLORY. In time of war, there wouldn't be anything wrong with authorizing or directing subversive or clandestine forces of the United States—

Mr. ROGOVIN. That is correct.

Mr. MCCLORY [continuing]. To assassinate a foreign leader, would there?

Mr. ROGOVIN. That is correct.

Mr. MCCLORY. You heard Professor Casper's criticism of your reference to the committee hearing with respect to covert activities in which the late Representative, Clarence Brown, I believe, was questioning General Vandenberg.

That would be a legitimate reference to the history of legislation, would it not, in the absence of some debate on the floor of the House?

Mr. ROGOVIN. Well, Mr. McClory, I think what occurred in 1947 is that we suffered from an overuse of euphemisms to the point where we have rendered legislative history almost nugatory.

There is no question in my mind that at the conclusion of World War II the experience of the OSS, which was known to the Congress and to the American public, was looked on as a great asset.

The President, through a Presidential directive, created a civilian organization that would undertake the same activities as those of the OSS.

I am afraid that our representatives at the time and our executive branch respondents gagged at the use of language that is now commonplace, and chose to use euphemistic descriptions rather than be specific as to what was in mind.

I believe I indicated that when Admiral Hillenkoetter testified at an appropriation hearing in 1948, he specified what the CIA was interested in. They were interested, for example, in purchasing dynamite, and doing research in psychological warfare activities. None of these requests fell into the mere collection of intelligence category.

Mr. McCLORY. It would be far preferable, would it not, for this committee to recommend that, in the area of covert activities, we specify at least in some appropriate language those kinds of covert activities that the CIA and other intelligence agencies might carry on and perhaps describe those that should be prohibited? In other words, the extent to which we are going to authorize this, and the authority under which that kind of activity is going to be carried on, should be set forth much more specifically in legislative language and authority.

Mr. ROGOVIN. I certainly agree with you, Mr. McClory. It is this very issue that is before this Congress, as a result of the work your committee has done—to drop the euphemisms. We must face the issue and acknowledge whether the United States will or will not engage in covert action. Then we must describe precisely the range of covert action that is permissible and describe those activities which are to be clearly prohibited.

Mr. McCLORY. Is it not true also that, during this 27-year period since we authorized the CIA and since the demise of the OSS, the Congress took no initiative to investigate these kinds of activities nor to develop an oversight capability until the creation of this select committee?

Mr. ROGOVIN. Yes, that is correct.

Mr. McCLORY. So the dereliction certainly must be shared, if not principally assumed, by the Congress itself, and not by the CIA that operated without an oversight capability having been developed by the Congress?

Mr. ROGOVIN. I believe it is a shared responsibility, both for the past and for the future.

Mr. McCLORY. I yield back the balance of my time.

Chairman PIKE. Mr. Stanton.

Mr. STANTON. Thank you, Mr. Chairman.

Mr. Rogovin, there has been some discussion here this morning that there have been successful covert activities by the CIA. Could you name one?

Mr. ROGOVIN. Mr. Stanton, the CIA's failures are trumpeted.

Mr. STANTON. I would like to give you an opportunity to trumpet a success.

Mr. ROGOVIN. I would certainly look forward to that opportunity in an executive session when the activities of the CIA can be more fully described.

Mr. STANTON. On a television show, Director Colby indicated that there were successes and mentioned a couple of them. I think if he can do it on a television show, you should be able to do it in this committee.

Mr. ROGOVIN. I came up here to discuss the legal issues. I recognize that the quality of covert action is fundamental to your ultimate judgment as to the continuation of covert action; but I don't believe it is appropriate for me, as counsel to the Agency, to take that on myself.

Mr. STANTON. As the legal counsel for the CIA, would you give me your opinion of what the original intention of section 102(d) (5) was, when the act was adopted in 1947, that is specifically related to intelligence?

Mr. Rogovin. Section 102(d) states that:

For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council—

The statute then ticks off five items. Paragraph (5) reads:

To perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct.

That is the provision which I have to assume was intended by the Congress to give maximum flexibility to the CIA and to allow it to engage in covert activities such as we are discussing today.

Mr. STANTON. Are you familiar with the Houston memo?

Mr. Rogovin. Yes, I am. This is Lawrence Houston, General Counsel of the CIA.

Mr. STANTON. It was issued in 1962?

Mr. Rogovin. Yes, sir.

Mr. STANTON. Would you suggest that that provision, 102(d) (5), as related to intelligence, was limited to clandestine operations and counterintelligence, as suggested by Houston in his memorandum?

Mr. Rogovin. I believe there can be reasonable dispute as to what Congress intended by the provision. I think you have heard some of the disputation this morning based primarily on the fact that the legislative history is far from clear.

I can point, however, to a more recent view. When section 662 was being debated, there was a colloquy on the floor between Mr. Nedzi and Mr. Morgan. Mr. Morgan at that time stated, when the reporting requirements were being discussed, "If the gentleman will yield, it is my belief that the amendment contained in the committee bill carries out and provides further"—and I underscore "further"—"statutory basis for the implementation of the understanding to which the gentleman has referred as applies to the foreign policy related operations of the CIA," the so-called "other activities."

Mr. STANTON. Is it still your position, as special counsel for the DCI, that the activities under section 102(d) (5) were related to intelligence covert activities only?

What I mean is, in terms of the action or the authority that you have, do you concur now with the opinion of the General Counsel, Mr. Houston, in 1962, and I quote from the language of paragraph 6 of that memorandum that, "some of the covert cold-war operations are related to intelligence within a broad interpretation of section 102(d) (3)"? He indicates that it would be stretching a point too far to include certain activity "even though intelligence and counter-intelligence are essential to such activities", and I eliminated the areas that he was talking about in reference to Cuba. He continued:

"In those operations, therefore, the executive branch under the direction of the President was acting without specific statutory authorization, and CIA was the agent selected for their conduct."

Mr. ROGOVIN. He is making the inherent power argument there—that the activity was a legal activity but he felt uncomfortable in relying on section 102(d)(5) as the sole basis for it.

Mr. STANTON. Do you concur in that?

Mr. ROGOVIN. I believe what we presented to the committee is a tripartite argument for legality, recognizing that each one of the arguments may not carry the day in totality, but the three of them, when put together, do demonstrate the legality of covert action. I am prepared to recognize that lawyers can have a different interpretation of it.

I believe that the history of the use of the word "intelligence" was intended to be broader, not narrower, than Mr. Houston subscribes to.

Chairman PIKE. The time of the gentleman has expired. Mr. Dellums.

Mr. DELLUMS. Thank you very much.

Since there seems to be some agreement that there is no statutory authority and we go back to Presidential inherent powers, I might add that in the hearings in 1947 the phrase was used "to perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct."

However, in the final version, the word "President" was left out.

How do you respond to that, if we are relying solely on the inherent powers of the President when apparently the final draft of the bill left the word "President" out?

Mr. ROGOVIN. We are talking, I think, Mr. Dellums, about two separate things here. One is the manner in which the authority is exercised, and under the statute it would appear to be sufficient, if you are relying on statutory authority, to rely upon the direction of the National Security Council.

If you are relying upon the President's inherent authority, then going through the current 40 Committee and the National Security Council to the President would not be necessary.

I think we saw in the Senate select committee's report on covert action in Chile, the so-called track II, a covert activity directed by the President and not run through the 40 Committee or under the aegis of the National Security Council.

Mr. DELLUMS. Let me ask you this: Apparently the staff, in reviewing 40 Committee minutes, has come across covert action which has been approved by the Assistant to the President for National Security.

Now, does the assistant to the President have any inherent powers?

Mr. ROGOVIN. Not to my knowledge.

Mr. DELLUMS. The Assistant for National Security Affairs would have no inherent powers to approve?

Mr. ROGOVIN. I am not aware of any inherent powers that would sit in that office.

Mr. DELLUMS. Does the authorization of the National Security Council or of the President of the following action overseas constitute crime: Assassination, surreptitious entry, destruction of property, and theft?

Mr. ROGOVIN. I am sorry; I didn't hear the predicate to the question.

Mr. DELLUMS. Does the authorization of the National Security Council or of the President of the following action overseas constitute

a crime: Assassinations, surreptitious entry, destruction of property, and theft?

Mr. ROGOVIN. With respect to assassination, I believe the Senate select committee concurred in my earlier judgment, since they have recommended that assassination be made a crime under the laws of the United States. With respect to the other activities, these are activities that are generally related to espionage, and I am sure that they are a crime in the country in which they are practiced, but not a crime in the United States.

Mr. DELLUMS. Mr. Casper, may I ask you this question: Can the National Security Council or the President authorize action overseas which would violate U.S. law, the law of a foreign country and/or the Charter of the United Nations?

Mr. CASPER. I would have to make a disclaimer as far as the Charter of the United Nations is concerned. I am not an authority on that at all. It seems to me clear that the President cannot authorize action which is in violation of American law.

Now, from that it does not necessarily follow that in a technical sense some of the acts which are now attributed to the CIA were, at the time, within the reach of U.S. criminal law; because, normally, U.S. law does not extend its jurisdiction to acts committed abroad.

The one exception I know is section 690 of title 18, that very old provision which prohibits hostile acts toward foreign countries.

Thus, while CIA activities may, in a substantive sense, have violated American criminal law, American law may nevertheless not be applicable because it has a jurisdictional limitation, Mr. Dellums.

Mr. DELLUMS. Thank you.

Mr. Rogovin, in time of peace, what is the legal authority for the National Security Council or the President to order covert paramilitary operations or operations to overthrow a foreign government?

Mr. ROGOVIN. The question can best, I think, from my point of view, be reversed and put in this fashion: "Is there any limitation on the covert activities in peacetime relating to the use of force short of war?" The War Powers resolution does not appear to restrict that type of paramilitary or covert action.

As a consequence, I would say that, other than section 662, there is no limitation on the President or on the Central Intelligence Agency in that respect.

Chairman PIKE. The time of the gentleman has expired.

Mr. Kasten.

Mr. KASTEN. Thank you very much.

Mr. Rogovin, I would like to start in that same general area but from a different direction.

The National Security Act of 1947 mandates the CIA to carry out such other functions and duties related to intelligence affecting the national security. Does the phrase "affecting the national security" suggest any limitations on the types of actions that can be authorized?

What is the meaning of the concept "national security"?

Mr. ROGOVIN. Currently, the President has to certify that any covert action undertaken by the United States is important to national security. This is a concept that I am sure differs with the occupants of the Oval Office and also differs with the advisers to the President. It is not clear what precisely falls within that category.



I am afraid the Congress has used that same phrase in various other enactments. I am not aware of any specific legislative history that sets the metes and bounds of what is our national security.

Mr. KASTEN. In terms of guidelines—not legislative history—does the White House or does the CIA have any definition of the concept, or any guidelines or operating procedures which would guide us in understanding the executive branch's use or interpretation of the concept of national security?

Mr. ROGOVIN. I am afraid that is a question that could better be answered by someone involved in the process of determining national security. All I can point to is the fact that I am unaware of any definition.

Mr. KASTEN. In the 1974 Foreign Assistance Act, the same term, "national security," comes back.

What standards would you recommend that the Congress use to determine if the President is in conformity with his duty to report to the Congress under the 1974 act—which requires him to submit such reports on CIA covert operations "important to the national security"?

What guidelines should we use to determine whether or not he is reporting to us on covert operations "important to the national security"?

Mr. ROGOVIN. The statute requires two things: It requires first that there be a finding by the President. The statute makes a finding by the President a condition precedent to the expenditure of the funds for the operation, and therefore the President is restricted in expending such funds until such a finding is made.

Now, the finding should be, for each operation and in the terms of the statute, important to the national security and, as a matter of good practice it should be in writing.

Mr. KASTEN. Excuse me. I don't mean the law. I want to know what standards we should use to determine whether the President is in conformity with the reporting requirements that you are outlining. How do we define "important to the national security"?

Mr. ROGOVIN. I think what you first must have is a very thorough finding on the part of the President with respect to the scope of the activity.

You have to have your factual base set forth so that there is a common basis of knowledge as to what precisely the problem is; the part of the world where such an action is proposed; the necessity for such action; what the driving force on the part of the President and the administration is for such activity; the risks that are involved in the activity; why he believes it is important to the national security that such activity take place; whether there are alternative, less dramatic, activities which the United States might engage in either overtly or covertly.

I believe a very extensive dialog can go on when the President's representative comes to report to the appropriate committees with respect to the covert action.

Mr. KASTEN. Going to another part of the Foreign Assistance Act, do the 1974 Foreign Assistance Act amendments relating to the CIA's covert action activities require by law that such activities be reported

to the appropriate congressional committees prior to their initiation? Does the law require that the reporting be made prior to their initiation, or simply that Congress be apprised of these activities?

Mr. ROGOVIN. There are two parts to the statute. One is the requirement first, that the President make a finding before any funds are expended. The second part of the act is the reporting "in a timely fashion." This reporting is not a condition precedent to the expenditure of funds; the finding is a condition precedent to the expenditure of funds.

Now, what you are concerned with, and I am sure what the committee is concerned with, is the ambiguity created by the words "unless and until" which precede the verb "finds."

Mr. KASTEN. Let me ask the question a different way. Can the Congress veto such activities at any point? If so, at what point?

Mr. ROGOVIN. I think section 662 of the act is imperfect. What it does is allow the President to make a finding. It then calls for the President to make a report to the Congress in a timely fashion. It does not say what, if anything, the Congress is to do with the information that it secured. I think Mr. Colby has, on a number of occasions, pointed out the dilemma that he would be in if, in reporting to six committees, three of them said that was a great idea and we should do it, and the other three concluded that it was the worst possible approach and that the administration ought not go forward.

Mr. KASTEN. Let's just assume there is one committee. How would the Congress veto the activity? When and how?

Mr. ROGOVIN. Well, the Congress still is responsible for the appropriations that would be used for the activity. We have seen from time to time bills introduced that would preclude funds being used for particular activities; that is one way.

I would hope that before that would take place there would be consultation between the executive branch and the legislative branch, in order that there be communication of ideas.

[By letter of January 6, 1976, Mr. Rogovin replied to the committee's letter of September 2, 1975, to Mr. Colby about this statute. Both letters are printed on pages 2011-2020 of the appendixes.]

Chairman PIKE. The time of the gentleman has expired.

Mr. Murphy.

Mr. MURPHY. Mr. Chairman, I apologize to the Chair and the witness for my lateness. I will yield my time to Mr. Dellums.

Chairman PIKE. Mr. Dellums is recognized for 5 minutes.

Mr. DELLUMS. Thank you, Mr. Chairman.

Can the President legally order CIA covert activity without the authority, authorization, direction and recommendation of the National Security Council?

Mr. ROGOVIN. I believe, under the argument of inherent power, he could.

Keep in mind that the National Security Council does not meet on covert action. A subcommittee of that National Security Council, the so-called 40 Committee, does meet and makes its recommendations to the President with respect to covert activity.

Mr. DELLUMS. May I ask Mr. Casper to respond to that as well?

Chairman PIKE. If the gentleman would yield for a second, I think it would be good parliamentary procedure if any time either of the witnesses is asked a question, the other could comment on the answer.

Please feel free to do so, Mr. Casper.

Mr. CASPER. Mr. Dellums, it seems to me that there is no inherent Presidential authority—as I have argued here this morning, contrary to Mr. Rogovin—and the statutory authority also does not exist under that act. That is restricted to intelligence activities.

There is now some Presidential authority under the Foreign Assistance Act, no doubt about that; but not under the 1947 legislation.

Mr. DELLUMS. Thank you.

Mr. Rogovin, do you think that telephonic approval by the National Security Council provides a legal basis for approval of Presidential covert operations?

Mr. ROGOVIN. I don't believe that the National Security Council was involved in telephonic approvals. I think you are perhaps referring to the 40 Committee where documents relating to the proposal had been previously circulated and the concurrence or objections of the various members of the 40 Committee were secured by telephone.

Yes, I believe in the 20th century it is not necessary for everyone to be in the same room all at the same time, where the material had previously been distributed, for the members of the 40 Committee to express their views.

Mr. DELLUMS. I would just add one caveat to that. Whenever we go into executive session with the intelligence community, they give us charts and diagrams. How can you do that over the telephone?

Mr. ROGOVIN. This isn't to say it is the best of all worlds. I would certainly think the interaction of members of the committee is enhanced by the personal appearance of the proponents and everyone being present at the time of a vote, I don't believe, however, that the fact that it was done by telephone in and of itself flaws the procedure.

Mr. DELLUMS. Let me ask this question of both of you:

In the situation where the United States proposes engagements in covert action to overthrow governments and carry out paramilitary operations, what are the constitutional requirements regarding congressional involvement?

Mr. CASPER. Mr. Dellums, I would assume that those are foreign policy matters which require congressional participation in the decisionmaking. If I may, somewhat belatedly, respond to your prior question. Frequently, it is quite unrealistic to stress Presidential authorization. The fact of the matter is that authorization often means bureaucratic authorization. The idea that the framers would have approved of "experts" in the CIA or elsewhere in the Government as authorizing measures which have serious consequences for the foreign policy and the defense posture of the United States, but would have excluded the Congress from those decisions, seems to me to be preposterous.

Mr. DELLUMS. Mr. Rogovin.

Mr. ROGOVIN. Mr. Dellums, under the current law, with respect to any far-reaching covert action that represents an act of war where constitutional responsibilities on the part of the Congress were in-

volved, would be briefed to the appropriate committees under section 662; and I would have to assume that the appropriate committees' reaction would be that this is a matter relating to the constitutional powers of the Congress. If it is tantamount to an act of war, the committee might decide that this has to go to the full Congress.

But that isn't the only type of covert action, and indeed that isn't the type of covert action that we are currently faced with. Through these examples you are bringing this issue up to the brink of war and bringing the Constitution constantly into play.

Chairman PIKE. The time of the gentleman has expired.

Mr. ROGOVIN. The covert action that we are more frequently talking about involves a relatively modest amount of funds that might be contributed to support some trade union organization in another country and not the massive acts of war that have been alluded to.

Chairman PIKE. Mr. Aspin.

Mr. ASPIN. Thank you very much. I yield my time to Mr. Pike.

Chairman PIKE. Mr. Rogovin, in your testimony you cite the War Powers Act as imposing certain limitations on the Presidency. The War Powers Act involves the use of American Armed Forces.

Would you deem the CIA to be a part of the American Armed Forces?

Mr. ROGOVIN. No, sir.

Chairman PIKE. So in your view of the law, there would be nothing to prevent the CIA from hiring individuals to fight a war without the approval required by the War Powers Act?

Mr. ROGOVIN. That is correct. That legislation would not inhibit such an act.

Mr. CASPER. Mr. Chairman, that seems to me to be celebrating form over substance. After all, the War Powers resolution is not concerned with whether agents of the American Government wear a uniform but what they do.

Chairman PIKE. Mr. Casper, I want you to know that I agree with you completely. I am simply trying to bring out the tremendous expanse of legal power to conduct what amounts to war that the administration seems to assert it has.

Mr. ROGOVIN. Mr. Chairman, all the War Powers resolution does is require the President to consult with Congress before introducing armed servicemen into hostilities.

Section 662, while not doing precisely the same thing, requires the President to make an appropriate finding, if it were in the context of your example, and that has to be reported in a timely fashion to the Congress. There is a parity.

Chairman PIKE. We keep getting back to this business of reporting to the Congress. Now, you place the blame on Congress for not knowing what is going on, and to a large extent I agree with you. But, in your view, have you actually reported to Congress when the head of the CIA has informed the chairmen of only those committees which have jurisdiction—what you always refer to as “the appropriate committees”—have you then in your judgment properly informed Congress?

Mr. ROGOVIN. Mr. Chairman, it ill-behooves the executive branch to tell the Congress how it should run its organization—

Chairman PIKE. No; but we do not find knowledge being thrust upon the Congress by the executive branch.

Mr. ROGOVIN. Mr. Chairman, I think that you have to look within your own house before you find the executive branch to be in default. If the chairman of the committee—and I know this has not been the case in your chairmanship of this committee—but if the chairman of this committee were to say, “I will take secret briefings from the CIA, and I agree with you; it is too important and too classified to share with the other members of this committee,” what is our position? Are we to override the chairman’s judgment on that?

Chairman PIKE. You just gave away your position. You said, “I agree with you that it is too important and too classified to share with the other members of the committee.”

That is exactly what your position has always been.

Mr. ROGOVIN. No, Mr. Chairman; I am saying it is my hypothetical chairman who is saying: “I don’t want to pass this on to the rest of my committee.” What is our responsibility at that point—to override the chairman?

Chairman PIKE. I think, to bring it from the hypothetical into the real, that is exactly what the CIA has always said: “We will give you, Mr. Chairman, this knowledge, but it is so sensitive, and it is so secret, and it involves such risks if we are exposed, that we beg you not to tell the other members of the committee about it.”

Now, do you think that is an appropriate role for the Central Intelligence Agency?

Mr. ROGOVIN. Mr. Chairman, it is our responsibility to keep classified information—sensitive information—to as small an exposure of risk as possible. It is your responsibility as chairman to make sure that your committee is fully and adequately informed about its responsibilities. If we come and importune you to hold this information between you and the ranking minority member, and you don’t want to do that, you have consistently said, “I want everyone to get it,” and everyone does obtain the information.

Chairman PIKE. Yes; but there have been times when you have said, “We won’t give it to you.”

Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

I don’t want my expressions of endorsement for Mr. Dorsen’s statement to be misinterpreted as a comment on Mr. Rogovin in any way. As a lawyer, I think he has done an excellent job for the CIA, while recognizing the committee’s responsibility. If there are any potential adversaries here, I suggest they settle with him, and if there are any potential clients, I suggest they hire him and I treasure his friendship.

I also want to emphasize I don’t think the CIA is at fault here. We tend to get off on what is a red herring because, to me, the problem has been Presidential exercise of power and congressional acquiescence in that endeavor.

Now, having said that, I want to go after your statement.

As a reader of the Federalist papers and constitutional debates, I have to say I did agree with your statement about inherent Presidential power. I think Professor Casper’s idea of constitutional fundamentalism is one that is correct.

Mr. CASPER. I am glad you said that because I was worried why you didn’t applaud my statement.

Mr. JOHNSON. Two overt actions in 1 day.

If Congress enacted a law, and it was duly signed, preventing covert activities such as assassination plots or paramilitary operations or political activity such as occurred in Chile, would the President be bound by this?

Mr. ROGOVIN. I would think so.

Mr. JOHNSON. What does that do to your argument about inherent Presidential power? It seems to me it destroys it. The President cannot have the power if Congress can take it away from him.

Mr. ROGOVIN. The Supreme Court said in the tapes case that the inherent power is not an absolute one. We are arguing about the power of the Presidency with respect to the conduct of foreign affairs. That is a broad umbrella statement. To the extent that covert activity fits within that description, I am saying that it is within the inherent powers of the Presidency.

To the extent that the Congress speaks specifically, either with respect to a flat-footed prohibition or a prohibition on appropriations or a combination of the two, I think the President would be mindful of such a piece of legislation and not exert what is recognized to be a doctrine—not a black-letter law of the Constitution.

Mr. JOHNSON. Let's forget about the appropriations process, because you are right, that can always be utilized unless Congress finds itself entrapped. Going back to the time of Lincoln, he, as a freshman Congressman, was opposed to the exercise of the Presidential power in going into the Mexican War; but after the troops were there he felt he had to go ahead and vote for appropriations. The same argument was made again and again during the Vietnam war. So I think we have to bypass the appropriations argument.

It seems to me what you are saying is that the President can do these things unless it is prohibited by Congress. If it is prohibited, then he would have to abide by the prohibition and he would not have the inherent power to engage in activities the Congress has specifically prohibited. Is that what you said?

Mr. ROGOVIN. We made three arguments with regard to the legality of covert actions.

Mr. JOHNSON. I am not arguing with regard to the act of 1947. As one who spent most of his political life arguing about the Korean war and the Vietnam war, I know the futility of arguing in the face of congressional acquiescence and ratification.

Now let's talk about inherent powers. You will recall the statement of 1965 which said the President was a military dictator who could send troops anywhere in the world at his discretion. Hopefully, the guy who wrote that was embarrassed and didn't put his signature on it. If anybody in Congress said, "You can't do it," would you come up here and say, "You can't stop it; we have the authority to send the military abroad or engage in assassinations in peacetime"?

Mr. ROGOVIN. You engage me in probably the most difficult portion of my argument. I am talking about a doctrine, as I indicated. One would have to be very careful in making any types of judgments as to what legislation would do to that argument. I am quite mindful of the fact that if the situation were reversed and I were being asked to advise the President whether such legislation was unconstitutional as being an invasion of his prerogatives, I think I would have great difficulty

in mounting a veto message or in drafting it. I think there is a serious problem here. I am not prepared to either run up a white flag or to throw myself over the parapet and say, "You are dead wrong." I recognize it as a very significant issue. I tend to think that this President, or any President, would be strongly guided by the legislation prohibiting an act such as covert action, and that he might well accept that as a prohibition and certainly not challenge it.

Mr. JOHNSON. Thank you. My time is up.

Chairman PIKE. The time of the gentleman has expired.

Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Casper, not being a lawyer, I am afraid I don't have the brilliance to make great arguments and cite historical precedents. Therefore, I tend to think of these matters more in a practical, day-to-day light. In the Constitution, article 1, section 6, the following words are found concerning Members of Congress: " \* \* \* and for any speech or debate in either House, they shall not be questioned in any other place."

Also, House Rule No. XI gives any Member of Congress the right to access to any committee files and to any hearing record or any documents within those files, regardless of security classification or sensitivity. Let me now pose a question or two that are involved, I feel, in practical, day-to-day Government activities with regard to these references.

First, would you agree with the statement that intelligence work, by its very nature, is a highly secret business that must be conducted outside the public view?

Mr. CASPER. To some extent, yes, Mr. Milford. There are most certainly matters one would not want to have pronounced from the rooftops.

Mr. MILFORD. In view of a Member's constitutional right to speak on any subject, and in view of the wide diversity of opinions, political philosophies and expertise within the 535 Members of the Congress, would you agree that rule XI—the one by which the Members have total access to all records—would make it extremely difficult for Congress to responsibly protect classified information?

Mr. CASPER. Mr. Milford, I think that depends in part on the willingness of the Congress to enforce its discipline. You cite the speech and debate clause. That, of course, was intended to protect Members of Congress only against action from outside the Congress. The disciplinary power of the Congress over its Members was fully preserved.

If your question went to the responsibility of the Congress to see to it that confidential matters are kept confidential, I would fully agree.

Mr. MILFORD. In other words, you might think that a recommendation to change rule XI might be in order. Would that be a fair summary?

Mr. CASPER. Well, maybe that is an extreme remedy. I am a little bothered by uncertainty about the facts. Why should it nowadays be so much more difficult to keep matters secret when, in the past, it was apparently possible to achieve some understanding between the executive branch and the Congress that certain matters must be kept confidential, as disclosure would harm the national security? Has Con-

gress really had enough experience with sensitive information? We have really gone through extremely tense times, to be sure. There have been some leaks. Of course there have been many leaks in the executive branch. One doesn't always find it easy to separate those two. But I wonder whether also I should say that, of course, much information has not gone to the Congress. Thus I wonder whether we should not permit rule XI to gather some experience in the future and then see whether a provision of it might be called for.

There is of course one legal problem here which bothers me considerably. That goes to the question of committee authority the chairman touched on earlier. Congress does not have authority, as far as I am concerned, to delegate its functions to congressional committees. If the information refers to major policy initiatives like clandestine war, then I think all Members of the Congress have to be apprised of it, or at least must have a right to have access to that information.

Now that is perhaps more a theoretical than a practical problem. I think it is possible to think of some less important CIA activities or covert activities more generally, which would be authorized by a future statute and reported to a congressional committee. While that congressional committee clearly does not have authority to veto or do anything like that, which would be exercising congressional powers, it most certainly would have authority to determine whether it feels obliged to pass the information on to the rest of the Congress. That is really not very different from the exercise of other oversight functions by congressional committees. Not always does every step taken by the executive branch need to be reported to all Members of Congress.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

Professor Casper, during the course of your statement you have concluded that the National Security Act is exclusively concerned with better formulation and coordination of national security policy and does not address the propriety of covert activities, and that the Congress, of course, has a responsibility, as you just recently suggested, to exercise its oversight functions.

Do you know of any legal bar which could be raised by the Executive to a duly authorized, congressional request, for example, for suggestions of covert activities over any given period of time—say, starting now and going back to 1961? Is there any legal bar that immediately comes to mind?

Mr. CASPER. Congressman Hayes, I have the impression your hypothetical is not all that hypothetical. I do not see such a bar.

Mr. HAYES. So that if the Executive relies not on a legal argument about executive privilege but on a historical precedent, that would be, to your way of thinking, an argument not likely to be adopted by a court in upholding the Executive's right to withhold that information?

Mr. CASPER. Well, I don't think so. We have had the most reasoned discussion of this matter in the *Steel Seizure* case. In that case, Justice Jackson clearly said, as did even Justice Frankfurter, that no practice against the Constitution can ever ratify anything. Congressional acquiescence in the past—which might amount to abdication on the part of the Congress of its responsibilities—does not become constitutional because of repeated occurrence.



Mr. HAYES. Let me ask you, then: Is there an appropriate distinction to be drawn between an activity which is suggested by an executive department to and through the executive bureaucracy—claiming to be suggested under color of law—and a suggestion which has no claim at all to being authorized by law but instead is just a gratuitous suggestion to either that executive bureaucracy or the President himself? Should we distinguish that, as a Congress, when we are asserting some right to know about it or to examine it here in the legislative process?

Mr. CASPER. Mr. Hayes, I do not really think that distinction matters, although the problem is more complicated. I will come to that immediately. I don't think the difference is in terms of whether the suggestion had to do with activities possibly authorized by law or not authorized at all. The legal problem which I can foresee here is, of course, that the Supreme Court, in *United States v. Nixon*, did say that executive privilege had constitutional underpinnings. This is the first clear pronouncement on the part of the Court on this matter.

Now, it also said that the doctrine of candid interchange—the idea that the President and his immediate advisers can get the advice they need only if it is offered freely and without fear of disclosure—that doctrine is an essential part of executive privilege. But to be sure, the Supreme Court has gone out of its way, in a footnote, to say that nothing in *United States v. Nixon* was intended to prejudge the question of the assertion of executive privilege vis-a-vis the Congress. But there can be no doubt that it has become a little easier than it was before *United States v. Nixon* for the executive to make a claim which is not altogether legitimate.

Mr. HAYES. Do you think the bureaucratic authorizations which you talked about, which are, more often than not, not really Presidential authorizations at all, are clearly distinguishable by legal authorities such as the Congress or a congressional committee or a court, and can be appropriately described and requested? Does Congress have an almost untrammelled right to those bureaucratic authorizations?

Mr. CASPER. Again, I do not think the point is really the proximity of officials to the President or to the White House. The point is rather the national need—that is, the need of the Government of the United States, now not seen as the executive branch but as the United States—to keep certain types of information confidential. As I said, that claim is now somewhat more substantial than it was before *United States v. Nixon*.

But let me return to my first response to you, Congressman Hayes. I do think that Congress—in devising policy, in legislating, and so on—has the right, as far as I am concerned, to almost all information which is generated within the executive branch. There has to be a very strong contrary showing. The burden has to be on the executive branch to show that certain types of information are privileged, because, for instance, other rights are involved—the right to privacy or some such thing. But the burden is entirely on the executive branch to make such a showing.

Mr. LEHMAN. Mr. Chairman, I yield 1 minute.  
Chairman PIKE. All right.

I want to remind the witnesses—and I know you are not reluctant, Mr. Rogovin—that if you would like to comment, you are most welcome. This will not come out of Mr. Hayes' time. This is a response.

Mr. ROGOVIN. I want to align myself with Professor Casper's analysis of the current status of the executive privilege argument. I know this is merely a hypothetical that the Congressman has raised. But I think that, in viewing the facts, one wants to have out on the table whether alternative sources of information have been fully plumbed to insure that the committee is securing the information that it needs—before it comes to a contest with the executive branch as to whether certain recommendations relating to those matters are appropriate for subpoena power that would be enforced by the Supreme Court.

Chairman PIKE. I now recognize Mr. Lehman. If you wish to yield some time, go ahead.

Mr. LEHMAN. Thirty seconds.

Mr. HAYES. Thank you.

In regard to the national need that you described, is it appropriate for that national need to be defined by, for example, a resolution of Congress? If that resolution contains a definition, may the executive examine that and make conclusions about it in obeying a subpoena issued pursuant to that resolution?

Mr. CASPER. May the executive branch interpret the resolution in its own way? Well, most certainly it may. Whether the Congress is persuaded by the executive branch's interpretation is an altogether different question.

There is really one important point here, Congressman Hayes. I do not really foresee that many of these conflicts will get adjudicated because in the end somebody, including the courts, will engage in an avoidance technique before it comes to a real clash. But what we have to develop here, and what is presently lacking, is a system of reasonable accommodation. Of course, the Congress is particularly exasperated because in the past it does not seem to have been accommodated by the executive branch.

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Lehman.

Mr. LEHMAN. Thank you.

I was interested, Mr. Rogovin, in the question that Congressman Stanton asked in regard to the successes and the failures of covert action. It sort of brought to mind that possibly the difference between the medical profession and the CIA is that the medical profession can bury its mistakes. It looks like perhaps the reverse might be true in the CIA. This is the kind of moral value that I think we should be concerned about.

I am not a lawyer. But there are, I think, moral laws that this country must set an example for. The world has no other place to look. Even Eldridge Cleaver comes back to us now and says that, with all our flaws, we are still the best.

I would not like to see this country get down in the gutter with some of the other activities of other countries.

I would like to present two questions. I asked once before, in expressing the need to get a handle on some kind of financial accountability for the CIA, whether they had ever turned down a recommendation, as other agencies do, because they didn't have the

money. Now I guess I want to ask this question: Has the CIA, to your knowledge, ever refused a recommendation because they thought it would be an unethical and immoral act, as well as illegal?

Second, is it, in your opinion, perhaps possible that some of the actions of the CIA, as they become known, could set examples for other groups in this country—"If it is OK for the CIA to do it, why not let us do our own covert actions?" We had seven covert actions in Dade County last weekend. Who is going to set the example for official behavior in this country, if it is not the responsible agencies such as your own?

Thank you.

I yield back the balance of my time.

Chairman PIKE. The gentleman is entitled to respond.

Mr. ROGOVIN. I think there were two questions. With respect to whether any individual in the CIA has ever turned down an assignment because of the ramifications, I believe the answer is "Yes." I believe this committee also heard Mr. Colby testify at an earlier time with respect to the question of assassination. He stated that if, as Director, he was posed with that order by a President, he would attempt to dissuade the President from that act; he would, under current law, have to brief the Congress and, in the last analysis, he said he would resign from his office rather than follow through.

Those are options that are available to civil servants, not only in the CIA, but elsewhere in Government.

The object of the covert action in Dade County was a former partner of mine, Bill Rogers. I very much fear for his safety. I am equally concerned with lawlessness in the United States. I think we have a fundamental question that Congress and the American public have to face regarding an intelligence agency. Espionage is nothing but the violation of someone else's laws. I think you have to recognize it and you have to put that right out on the table at the very outset. To convince someone to be a clandestine source of information—I am just talking about gathering information—you may have to convince an otherwise loyal citizen of a foreign country to act in a fashion that is not consistent with the laws of his country. I think that if anyone looks at espionage in a benign fashion—"Well, we will make some snips and pastes, and we will turn it into an all-American activity"—I think you have to reexamine some of the basic premises.

Mr. LEHMAN. At some point the price gets too high morally.

Mr. ROGOVIN. There is no question about that.

Mr. LEHMAN. That is where I would like to see some sort of policy line drawn, if we could do it.

Mr. ROGOVIN. We are certainly in the right arena. You gentlemen are Congressmen. That is a question of legislation. I think that is a question this Congress has to face. You have heard most of the evidence. You have had a very thorough investigation. You have to make judgments now because you are the representatives of this country.

Mr. DELLUMS. Will you yield to me?

Mr. LEHMAN. I yield to the gentleman any time I have left.

Mr. DELLUMS. I would like to ask a question which I think goes to governmental ethics. Earlier, in response to a Member's questions, you raised the issue of Congress getting its own house in order with respect to the fact that you could bring forward to various committees

grave matters such as paramilitary operations, destabilizing or overthrowing governments, which are very serious and important. You stated that if those committee chairpersons or if those subcommittees did not choose to bring those grave matters to the entire Congress, that it was a problem of Congress not getting its house in order.

My question to you is: If we are all operating within the framework of the same Government, and if we are all indeed attempting to represent the same people, whether we are in the legislative or executive branch, what is the executive branch of Government's ethical responsibility when you clearly see that a subcommittee chairperson or a subcommittee has been in fact derelict in its responsibility to carry that matter to the full Congress?

Do you hide behind that chicanery or that lack of action and say, "Since the Congress did not assume its responsibility, we can move ahead with these grave matters"?

I agree with Mr. Casper, Congress cannot delegate ultimate authority to a subcommittee or a committee of Congress. It can delegate decisions, but not authority, on a certain matter. I would like to know the position of the executive branch, since we are talking about ethics.

Mr. ROGOVIN. I am putting myself in the position of a person who has to carry this message. If the President has certified this to be important to the national security, we are talking about a grave matter. I would certainly believe that it would be the DCI's responsibility to go back to the President and say, "Mr. President, I think we are embarking on an adventure, the likes of which the Congress is unaware of. It is my understanding that that committee chairman will not advise anyone else on that committee. And I think we have a serious problem here because while we may be living up to the letter of section 662, we are certainly not living up to the spirit of it. I consult with you. What can we do and what should we do?"

I think that is a legitimate and fair question. I would hope that that would be the scenario that we would follow.

Mr. DELLUMS. Has it ever been done in the history of this country? Has the executive branch ever done what you suggest should be done?

Mr. ROGOVIN. I think the executive branch operates through many and varied agents. I am confident that there is a steady flow of people who have come to the Congress to advise them of activities within the executive branch that were not the subjects of formal advice. I think that we have developed a capacity to be good listeners.

Chairman PIKE. The time of the gentleman has expired. Mr. Field.

Mr. FIELD. Thank you, Mr. Chairman.

I would like to ask some questions on a relatively narrow point of law—particularly that clause in the law, the CIA charter, which allows covert actions. That clause says you may "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

Now, Mr. Rogovin, in response to Mr. Johnson's question, you indicated that the President's inherent powers—inherent power in this case is the inherent power to conduct foreign policy—that his inherent powers are not absolute and that if Congress specifically spoke to the issue and addressed it, that would have a bearing on his inherent power.

In this particular clause which authorizes the CIA to conduct covert action, it would appear that the Congress did speak to the issue, since the draft clause allowed the President as well as the National Security Council—which was called the National Intelligence Authority at that time—to direct covert action. The final version eliminated the President, which would appear to be Congress speaking to the issue, and in some way addressing itself to the President's inherent power.

Do you agree with that?

Mr. ROGOVIN. What was done was that the Congress recognized that the National Intelligence Authority—which was the counterpart of the National Security Council—was the organization to which the CIA would be responsive and it was unnecessary to put in that they would be responsive to the President too. It would be just as unnecessary to put in tax legislation, that vests authority in the Secretary of the Treasury, that the President is to have a role in the administration of our tax laws. As a consequence, I don't read anything of great significance in the fact that the first draft mentioned the "President" and the NIA—National Intelligence Authority—and the "President" was stripped from the second final draft.

Mr. FIELD. So your position would be that they felt it was unnecessary to tell the President.

In any event, we have a final law. It is not something to be treated casually. We have a specific law which says the National Security Council has to direct these operations.

Now, I want to ask you whether or not, in two or three types of instances, you would feel that law has been satisfied.

If an operation is directed by the President and all that is then done is that it is put on a piece of paper and taken around to different participants on the National Security Council Subcommittee—the 40 Committee, which deals with covert action—and they initial it but have no choice or chance to express their views, does that satisfy the law?

Mr. ROGOVIN. Mr. Field, you have added factors that I am not prepared to accept. You have denegated this to a situation where the members of the 40 Committee are merely conducting the ministerial act of putting their initials on something. I am not sure the statute even requires that. I have to assume if someone has strongly held feelings to the contrary they would seek access to the President and explain why they are in disagreement.

Mr. FIELD. I want to stay on a narrow point of law. Did the National Security Council direct that action?

Mr. ROGOVIN. What evidence do you have? You have an agreement by the members of the subcommittee?

Mr. FIELD. The first they hear of it is when they are shown a piece of paper and told, "Here, initial this." It says, "The President has directed the following action:"

Does that constitute, in your mind as a lawyer, direction by the National Security Council?

Mr. ROGOVIN. I am not really prepared to pass judgment on your set of facts, Mr. Field. I have great difficulty in accepting the characterization.

Mr. FIELD. Let me give you an easier one. When the President calls in the head of the CIA and says, "We want you to undertake this

project, but don't tell the 40 Committee," does that situation satisfy the law?

Mr. ROGOVIN. No; it doesn't satisfy the argument relating to the 1947 act.

Mr. FIELD. Let's take another situation. If the assistant to the President, Dr. Kissinger, directs a project and does not formally inform the rest of the 40 Committee, does that satisfy the law?

Mr. ROGOVIN. Under the 1947 act, no. This is not to say that either of those examples might not have been appropriate examples of legal covert action under inherent powers of the Presidency.

Mr. FIELD. If the Congress had not spoken to that inherent power. But I maintain that it has spoken to it, and there is a definite law on the books.

Mr. ROGOVIN. Fair enough; then we have a dispute.

Chairman PIKE. All time has expired.

I want to thank the witnesses for coming here today. I think the problem which obviously you leave with us is that it is, as you all agree, our problem. What we will do with it, I do not know.

It is the intention of the Chair to have an executive session this afternoon at which time Mr. Colby will be present and we will have a staff briefing, together with Mr. Colby, on the information gathered in response to our subpoena regarding all 40 Committee approvals of covert activities.

Mr. McCLORY. Mr. Chairman, I want to join in commending the witnesses, the experts who have appeared here this morning. Their statements and responses to questions have contributed substantially to the work that we have. And now, Mr. Chairman, I move that the committee do resolve itself into executive session and that we recess until 2 o'clock.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Mr. Pike.

Chairman PIKE. Aye.

By a vote of 7 ayes to 1 no, the committee is resolved into executive session and we will meet at 2 o'clock this afternoon in this room.

[Whereupon, at 12:51 p.m., the committee recessed, to reconvene at 2 p.m., the same day.]

## COVERT ACTION

WEDNESDAY, DECEMBER 10, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 2203, Rayburn House Office Building, Hon. Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Stanton, Dellums, Murphy, Aspin, Milford, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Roscoe B. Starek III, counsel; and Fred Kirchstein, investigator.

Chairman PIKE. The committee will come to order. I want first to apologize to our very distinguished witnesses this morning because I have a longstanding commitment to be somewhere else at 10:30. It is not on Capitol Hill, and I am going to have to leave. I hope I can find some warm body on the Democratic side to preside in my absence. If I can't, everything will come to a screeching halt.

Mr. McClory. Mr. Chairman, I am able to preside.

Chairman PIKE. Mr. McClory, you know I trust you implicitly, and I would be delighted to have you do so. But unfortunately that would violate our rules and you are such a purist in those matters, I think it wouldn't work.

I have talked with our staff about the meeting which was held at the White House last night. I am told that, in the judgment of the staff, the meeting was satisfactory. There is always a great temptation at moments like this to allege victory. I am not going to do so, because I think that what was worked out was satisfactory to us. It was, on the other hand, a compromise. We did not get everything we wanted, but we got more than they wanted to give us.

Mr. Field, would you like to speak briefly on the subject?

Mr. FIELD. Just briefly, Mr. Chairman, we met last night from a little after 5 until almost 7 o'clock. We began by stating our position, which was that the 20 recommendations for covert actions, identified by the State Department as having come from them, would have to be specifically identified to us, and we would have to be given any and all information as to the specifics of those programs.

The meeting was then turned over to Mr. Hyland, who had both the State Department recommendations and the 40 Committee minutes before him. He read verbatim from the 40 Committee minutes, and he used the State Department recommendations to verify the date, the

(1771)

country, and the type of program that was recommended by the State Department. He was very forthcoming in answering any questions we had about the programs, including the reasons they were recommended, who concurred in the programs, what happened to the recommendation—that type of thing.

We took a few examples and asked him about them in great detail to assure ourselves that we would be able to do this. He gave us an initial briefing on three recommendations that were made between 1961 and 1965, and then went on to do the same with the remaining 17 from 1965 onward.

To the best of my knowledge, Mr. Chairman, we are able to get all the information that we want. We have a very good assurance that the 20 recommendations which were covered by executive privilege have been identified to us, and we have all the specifics relating to them.

Chairman PIKE. I would just like to add that as a matter of procedure it is my intention to go to the floor of the House at some point today and state—if there is no objection from any member of the committee—that the committee deems that we have substantial compliance on this subpoena and the issue is moot.

Mr. McCLORY. Mr. Chairman, I appreciate your statement and also the statement of counsel. I think it is extremely important that we have been able to resolve this very difficult situation.

I want to express appreciation to the White House for their cooperation, which came at sort of the 11 hour. Nevertheless, we do now have that information which satisfies the needs of this committee insofar as its investigation is concerned, and we have avoided another confrontation. I think what we have accomplished is in the interest of the objectives of this committee in fulfilling the job we have had assigned to us.

I appreciate your statement, Mr. Chairman, and the fact that we will be able to dispose of this matter that is pending in the House.

Chairman PIKE. With that disposed of, as a little background, we are now going to discuss proposed legislative measures which may enable us in the future to avoid some of the horrors we have experienced in the past. Our first witness this morning will be Mr. Roger Fisher, professor of law at Harvard University.

Mr. Fisher, we thank you very much for coming, and you may proceed with your statement. And again I apologize for my having to leave.

#### STATEMENT OF ROGER FISHER, PROFESSOR OF LAW, HARVARD UNIVERSITY

Mr. FISHER. Thank you very much.

I am here at your request and am happy to be here.

I have spent most of my professional life, certainly the last 15 years, concentrating on the problem of bringing law to bear on government, on the question of legal techniques for controlling governmental behavior, particularly when that behavior involves violation of the international rules affecting other countries.

I have prepared a written statement of some length, but I would like, with the permission of the chairman, to submit the prepared



statement for the record, have it printed in the record, and then to speak, hitting the highlights if I could, for maybe 15 minutes.

Mr. ASPIN [presiding]. Without objection, it is so ordered.

[Mr. Fisher's prepared statement follows:]

PREPARED STATEMENT OF ROGER FISHER, PROFESSOR OF LAW, HARVARD UNIVERSITY, CAMBRIDGE, MASS.

Mr. Chairman, I am here at the invitation of the committee in a personal capacity, representing no one but myself. For some years the central focus of my professional work has been on the problem of bringing law to bear on governments. In particular I am concerned with the extent to which legal methods can be used to increase respect for treaties and other international rules. This is reflected in a course I currently teach at Harvard Law School entitled: "International Law: The Compliance Problem."

This morning I would like to make five points:

First, that the lawless behavior of members of the U.S. intelligence community has been and is disastrous for the United States. It is morally wrong; and being morally wrong it is, in purely pragmatic terms, counterproductive.

Second, legislation is required. Only law can solve the problem of lawlessness.

Third, new remedies. The most critical need is for a new office within the executive branch to enforce whatever rules Congress adopts limiting covert activities. A congressional committee can supervise law enforcement; it cannot be a substitute for it.

Fourth, action requires authorization. Congress should make clear that for the CIA as for the rest of the Government, no one should act except as authorized by law.

Fifth, and finally, what conduct? Personally I would permit nonviolent intelligence gathering and prohibit covert operations; but whatever lines Congress draws, each rule should be related to the corresponding remedy involved, whether that is administrative discipline, compensation to an innocent victim, an injunction, or a criminal prosecution.

In my prepared statement I have illustrated some of these points with suggestive drafts of possible legislation. These are not definitive proposals. In their present form some are little more than sketches, intended to help my own thinking and that of the committee. If any of these ideas should interest the committee I would be happy to work on them further.

# I. THE PRESENT SITUATION IS DISASTROUS FOR THE UNITED STATES

There is a widespread agreement that the United States should not engage in the kind of lawless conduct demonstrated by the recent disclosure that officers of the United States were attempting to murder officials of foreign governments. The questions facing Congress are where to draw the line between permissible and impermissible conduct, and how to cause respect for the line that is established. The decision as to what conduct to permit and what conduct to prohibit needs to be made in light of the reasons for stopping what has been going on. What's wrong with what the CIA has been doing? The answer is that what the CIA has been doing is wrong morally, pragmatically, and legally.

## A. MORALLY WRONG

Some things are morally wrong, just plain wrong. Even if we could make them legal—even if we could "get away" with them—we ought not to do them. What was wrong with Nazi Germany was not that it was illegal, or that it was unsuccessful. Evil conduct is judged by standards far more basic than that. Civilization—all the teachings of religion, history, literature and philosophy—demand that our conduct be principled and justifiable. Conduct that is wrong for others is wrong for us. Unless we adhere to some moral standard, we have no basis for saying that our views ought to prevail.

There is no sharp line to guide us, but we can sense the difference between right and wrong by asking ourselves such questions as: Is this conduct of which I am proud, of which I would like the world to know? Is this something I would like my children to be doing? Do I think that future historians will judge us to have been wise and just? What do we guess that heroes of the past, such as

Jefferson or Lincoln, would say about covert meddling in the politics of other countries? Would we think better of them if we learned that they had been doing such things?

Each of us has his own way of refreshing his individual conscience, but we must collectively remind ourselves that before we had a Constitution we recognized some first principles about right and wrong. Two hundred years ago we knew some "truths to be self evident," that there were "certain unalienable Rights" and that some situations must be judged by "the laws of nature and of nature's God," and by according "a decent respect to the opinions of mankind."

Much of what the Central Intelligence Agency has been doing cannot stand such a test. We should proudly bring the highest moral standards to bear on our governmental conduct. We should do those things of which we and the next generation will be proud.

#### B. PRAGMATICALLY, OUR CONDUCT HAS BEEN COUNTERPRODUCTIVE

Even if one were free to leave aside the moral issue, CIA's covert operations fail in terms of crass pragmatism. We have pursued the wrong ends by mistaken means at high cost.

##### 1. *Wrong ends*

The assumption underlying CIA's covert operations is that the world is essentially a war between bad people (Communists) and good people (us). The struggle is seen as a single great conflict for the world in which the Soviet Union and the United States are struggling to gain a dominant position in every country.

It is impossible to determine the exact mix of Soviet intentions among the goals of communism, domination, loyalty to Moscow, revolution, liberation, economic development, trade, and peaceful coexistence. Institutions, even more than people, pursue a number of inconsistent goals. But whatever the Soviet goal may be about imposing its view upon the world, that is not our proper goal. If we stop and think we will discover what we really want. They may want domination; we really want other countries to be free. They may want to force all issues into the single question of communism; we want individual issues dealt with on their respective merits. They may want to promote world revolution; we want to promote international order. They may want to promote disregard for "bourgeois" ideas of law, individual freedom, and private interests; we are trying to promote respect for those ideas. Our true goals are not the mirror image of theirs.

The game of nations is not one in which our basic objective is to have others lose all the time. It is a game about a game. Our basic objective is to so play each hand that over time the game is improved. We are trying to build a structure—a system that is fair and is accepted by most of the countries of the world. We do not truly seek a world in which every country dances to our tune. It is not a world in which foreign leaders are secretly in our pay, in which people with whom we disagree mysteriously die or lose power. We expect and want a world that is filled with different ideas, different goals and different values. We look for a world in which other countries are willing to play the game because they sometimes win, and we sometimes lose. We want a world in which we can afford some losses because the hands are small, because the procedures are fair, and because, in the last analysis, we are not always right. It is a world in which the United States is not working against communism but is working for food, freedom, and fairness. To a large extent our serious mistakes of the past years reflect the mistaken notion that we are trying to fight a war instead of trying to build a peace.

##### 2. *Mistaken means*

Covert operations designed to affect the political leadership in other countries are inappropriate to our purposes.

(a) *We are not all-wise.*—When the U.S. Government tries by covert means to remove or install a given political leader in an African, Asian or Latin-American country, there is a terrible assumption that we know what is best. Unlike the case where we are simply working toward fair procedures like elections and a free press, we have been trying to play God, by picking one man over another. Even with a CIA-approved program it is impossible to tell whether one player is in fact better or worse than the player who will succeed him. Those who defend covert operations routinely mention Hitler, and ask whether

that isn't a case in which covert operations in the 1930's would have been justified. The very case suggests just the opposite. It is highly probable that if the CIA has been operating in Germany in the 1930's it would have been opposing radicals and Communists, and would have helped pave the way for that strong, anti-Communist leader, Adolf Hitler. Today, in supporting an anti-Communist we may be building up a small-time Hitler in some other country. In opposing a pro-Communist we may be undermining another Tito who could strengthen the forces for diversity among Communist countries.

Those who are most outspoken against us may later turn out to be our best friends, just as President Nixon, in part because of his strong anti-Communist record, was able to reopen political relations with China.

In an African country, it is said, the CIA cleverly stole documents from the local government and secretly planted them on a Soviet official, resulting in his being expelled from the country. In CIA terms, that is called a success. But we are playing for the long term. A modest Soviet presence in an African country may turn out to be in our interest. Certainly few things made President Sadat's pro-American policy more popular in Egypt than Egyptian recollections of the 20,000 Soviet troops who had been invited in to Egypt by President Nasser.

The method of imposing short-term results by covert means rests on the assumption that our covert operators are wise enough to know the future. They are not. And it is much worse than that. The very secrecy we impose on ourselves increases the chance of error. By shutting out the light, CIA must grope in the dark. The fact that CIA decisions about those to support and those to oppose are made in secret, without the benefit of political input, and without the benefit of public criticism and responsibility, makes it even less likely that any decision will be wise.

*(b) Covert operations are inappropriate for our goals.*—The standard argument justifying covert operations is that "we must fight fire with fire." That misperceives the problem. To be sure there comes a time when force must be responded to by force. That is what war is all about. Congress, by a declaration of war, can indicate that the situation has gone so far that we must light a backfire. But that is not the situation today. We are not facing a conflagration, but rather some arsonists. And you don't fight arsonists by setting fires.

The fact that our adversaries may be prepared to use methods that tend to tear down the rule of law does not mean that those methods are wise even for them—and particularly not for us. Those most vigorously opposed to the United States are revolutionaries who want to tear up the game and start over. Others may want anarchy; the United States is trying to build a more orderly world. The illegal methods that others use for their goals have nothing whatever to do with the methods that can best help us achieve our goals.

Almost 200 years ago, when we were far weaker and far more vulnerable than we are today, this country made the basic decision that in time of peace we would fight evil with good, not with evil. We established a government dedicated to the proposition that we don't fight crime with crime; we don't fight corruption with corruption; we don't fight delinquency by becoming delinquent. We committed ourselves to fight closed societies by being an open society; to fight the evils of police states by being a government under law. At a time when there was far less democracy in the world than there is now, we chose our weapons, and we chose well. We will fight wrong with right.

Even when an armed adversary, in time of war, secretly landed saboteurs in our own country to engage in covert and lawless operations against us, those saboteurs were accorded a trial. Ex parte *Quirin*, 317 U.S. 1 (1942). Some thought we should have accorded them even more procedural safeguards. None suggested that we should fight fire with fire and have some James Bond character blow them up because they might have blown us up.

We are not just fighting a gang war. We must defend ourselves, of course, but this does not require us to go on the offensive in the gutter.

*(c) Our strength is not in dirty tricks.*—The United States as a society is handicapped in fighting by secret, illegal, underhanded means. We are, fortunately, restrained by moral principles. And we cannot keep our dirty linen private. We cannot expect that a national trait of which we have been proud from the time of Peter Zenger to the Pentagon Papers is going to be put aside when faced with one more argument about national security. Rightly or wrongly, we must be prepared to have our covert operations become public knowledge.

And even if some individual actions can be kept secret, a policy of engaging in covert operations in other countries is bound to become known, causing people to assume the worst.

We should join the battle where we can win. Let's compete in terms of freedom, candor, generosity and tolerance for the views of others. We are far more likely to gain world support on that battlefield than by competing for prizes in subversion, deception, bribery, illegality, and other forms of dirty tricks. When we choose our weapons let's choose ones we are good at—like the Marshall Plan—not ones that we are bad at—like the Bay of Pigs. To join some adversaries in the grotesque world of poison dart-guns and covert operations we give up the most powerful weapons we have: idealism, morality, due process of law, and belief in the freedom to disagree, including the right to disagree with us. Without these special weapons we are no better than the worst of our adversaries, and we have no moral claim to prevail. And without these weapons we are not likely to do so.

### 3. *Covert operations involve high costs*

Secret operations designed to affect the political leadership in a foreign country are bad for our friends, bad for us, and bad for the system.

(a) *We corrupt those we help.*—In other countries there are undoubtedly some good people deserving of our support. But support of an otherwise good man, either in violation of local law or secretly in ways about which he must lie and deceive, corrupts the very person we are trying to help, and corrupts the very society we are trying to assist. Any political leader who is secretly in the pay of a major foreign power becomes through our efforts a dishonest man. He will be acting under the secret influence of our financial and other support. By the standards of the United States he has probably become a criminal, a public official who is secretly in the pay of a foreign country. At best, he subjects himself to a conflict of interest which would disqualify him from public office in most of the States of the Union. And yet we have the effrontery to say that not only is he good enough for other countries, but that we will secretly do our best to get such a person into office. The use of dirty under-the-counter money cannot help but make other people dirty.

(b) *We harm ourselves.*—Doing evil things corrupts those who do them. CIA has turned decent Americans into amoral operatives who have no scruples about what they do so long as the boss tells them to do it. And lawlessness is contagious. Officials of the United States who approve illegal burglaries abroad have been the same officials who have approved illegal burglaries within the United States. If "foreign policy" and "national security" considerations are thought to make the end justify the means, that same logic tends to be applied at home. The history of CIA demonstrates that good people who believe that they have been authorized to engage in secret operations overseas quickly become involved in lawless behavior in this country, whether it is opening mail, wire-tapping, burglary or worse.

Not only do we corrupt ourselves, we seriously weaken our ability to be effective. There can be no doubt of the damage done to the United States by public knowledge of the kind of thing that CIA has been doing. President Ford himself, in his letter to Senator Church of early November, described the results in the following words:

- "Disastrous";
- "Grievous damage to our country";
- "Maximum damage to the reputation and foreign policy of the United States"; and
- "Seriously impair our ability to exercise a positive leading role in world affairs."

President Ford hoped that those consequences could be avoided by trying to cover up what CIA had been doing. Once it is recognized that trying to cover up lawlessness is no solution, and that a pattern of extended lawless activity overseas is bound to become known, the only way to avoid the damage to our reputation and to our ability to exercise a positive role in world affairs is to stop the lawless activity. We cannot hope to bottle up the truth. If the truth about what we have been doing leads to disastrous consequences, we have to stop what we have been doing.

The dirty tricks in which we engage prevent us in a very direct way from trying to stop the dirty tricks in which the Russians or others may be engaged. In any particular African state there is likely to be a *modus vivendi* in which the

CIA operative does not disclose to the local government what the Soviets are doing for fear that the Soviets will disclose what we are doing. If we refrained from any covert operations beyond gathering intelligence we could hold the Soviet Union to the same standard. We could help the local government enforce the law rather than join the Soviet Union in tearing it up.

(c) *We affect other countries by our example.*—The power of our example is probably greater than that of any other country. If the country of Thomas Jefferson, Abraham Lincoln, Franklin D. Roosevelt, and Dwight Eisenhower intervenes illegally in the internal affairs of other countries, engages in violence there, and tries in deceptive and dishonest ways to have its will determine who shall be their political leaders, we break down self-restraint by other governments. As the richest and most conspicuous country in the world we are a model for others. We set the pattern. We have more opportunity than any other country to determine the criteria by which merit and success are measured. We can insist that proper criteria are those of honesty, fairness, respect for the views of others, and a decent respect for the opinions of mankind. Or we can announce by our deeds that one is properly measured by ruthlessness, unprincipled violence, and by the abilities to deceive, and to wreck one's anger on others. Actions do speak louder than words. To a substantial extent we set the tone and style for the conduct of international affairs. By getting into the mud because others are there, and by trying to outdo them at the dirty business, we do not abandon our leadership role; we exercise it.

A second factor making the United States a powerful model lies in the effect of the mass media. U.S. magazines and wire services cover the globe. Freedom of the press here makes sure that they tell the world what the United States is really doing. And whatever we do others emulate.

By damaging the international system, we impose a cost on all countries, but the United States is uniquely vulnerable to lawlessness. We live in a glass house. No other country has so much of its daily life so dependent upon the frailties and complexities of modern society—upon documents, computers, electricity, telephones and upon intricate social structures all built upon rules and more rules. We should be the last one to throw stones. We should be the last one to convert counterfeiting, forgery, dirty tricks and sabotage into legitimate activities.

#### **C. LEGALLY, THE RULES RESTRAINING U.S. OFFICERS FROM LAWLESS BEHAVIOR ARE DEFICIENT, DEBATABLE, AND UNENFORCED**

If the conduct in which CIA has been engaged is bad morally and bad pragmatically, it is also bad legally. Substantive rules of law exist but are unclear; procedures for causing respect for such rules as do exist are grossly inadequate.

Apparently the entire covert operations of CIA designed to affect what happens in other countries are deemed to be authorized by 50 U.S.C. Sec. 403 (d) (5) providing that—

"For the purpose of coordinating the intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency. . . .

(5) to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct."

That this statute was deemed to authorize conspiracy in this country to murder people abroad demonstrates the need for more specific legislation. One could argue—and may have to in another forum—which among the many things that were done were legal and which were illegal. It seems far better to look to the future and to propose what the law ought to be and how compliance with that law ought to be assured.

#### **I. NEW LEGISLATION IS NEEDED**

##### **A. THE CURE FOR LAWLESSNESS REQUIRES LAW**

In recent years officers of the Central Intelligence Agency have been using U.S. taxpayer's dollars to hire assassins to kill officials of foreign governments, have opened more than a million letters within the United States in violation of law, have provided assistance for burglaries within this country, and have engaged in countless other covert operations of which we may never know. All this has taken place with no clear substantive rules to guide the CIA and no clear procedures for assuring that the laws are respected. We have been suffering from too

much unfettered executive action. That problem cannot be solved by more executive action. Whatever the boundary is to be between what the CIA is to be permitted to do and what it is not, that boundary should be established by law—by Congress, by elected representatives of the people—not by the kind of administrative action that created the problem.

Both Congress and the Executive must accept responsibility for the CIA excesses: Congress for doing too little and the Executive for doing too much. The only cure for that imbalance is for Congress to do more.

#### B. THE CONSTITUTION GIVES CONGRESS AMPLE BASIS FOR LEGISLATION

When it comes to regulating the conduct of the Government of the United States, its officers, and employees the powers of Congress are extensive. Congress is granted some explicit powers; other powers are granted to the President. But Congress is explicitly charged with enacting legislation dealing not only with its own powers but also with those of the Executive. Under the necessary and proper clause,

"The Congress shall have Power \* \* \*

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, *and all other Powers* vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The Constitutional validity of most of the penal code rests on this clause. Certainly Congress is free to enact additional legislation that it deems necessary and proper for the wise execution of the powers granted to any branch of the Government.

In addition, Congress has the specific grant of authority to define and punish offenses against the law of nations. Many of the covert operations of the CIA designed to affect what happens within a foreign country against the laws of that country or against the wishes of its government involve violations or potential violations of international law such that Congress may properly define the line between what is permissible and what is not. Congress has so legislated in the past. In upholding legislation that made it a U.S. crime to counterfeit foreign bank notes the Supreme Court said:

"A right secured by the law of nations to a nation, or its people, is one the United States as the representative of this nation are bound to protect. Consequently, a law which is necessary and proper to afford this protection is one that Congress may enact, \* \* \* *United States v. Arizona*, 120 U.S. 479 487 (1887).

#### C. LEGISLATION SHOULD NOT BE IMPEDED BY EXECUTIVE CLAIMS OF INHERENT POWERS

There is no need to argue today before Congress the moot point of how far the President may act with respect to matters impinging upon foreign affairs in the absence of congressional legislation. Where Congress has not acted, the President might, for example, be free to order the seizure on the high seas of a vessel bound from a French port; but the President had no such power once Congress had acted authorizing seizures only of those vessels bound to a French port. *Little v. Barreme*, 2 Cr. 170 (1804). The extent of Presidential power both in theory and in practice depends upon the extent to which the Congress has acted. In the words of Justice Jackson in *Youngstown Co. v. Sawyer*, 343 U.S. 579, 654 (1952), "If not good law, there was worldly wisdom in the maxim attributed to Napoleon that 'the tools belong to the man who can use them.' We may say that power to legislate \* \* \* belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers."

The issue of inherent power is best dealt with by a court after Congress has enacted the legislation which it believes to be necessary and proper. Today, the task of Congress is to draft and enact those laws that it believes necessary for the proper execution by the President of all the inherent and other powers that the President may have. Congress should then make sure that the Federal courts have adequate jurisdiction to deal with any disputes that may arise.

#### III. WHATEVER THE SUBSTANTIVE RULE, THE MOST CRITICAL NEED IS FOR NEW PROCEDURAL REMEDIES

It is tempting to concentrate on the past and to debate the legality and propriety of what was done. Even when looking forward the temptation is to

argue about where to draw the line. The highest priority problem, however, is the establishment of procedures that will tend to cause compliance with whatever rules are established, and will successfully cope with alleged and actual violations.

#### A. CRIMINAL REMEDIES ARE INADEQUATE

If there is conduct in which we do not want people to engage, we instinctively propose to outlaw the conduct and make it criminal. But the criminal law has serious limits, particularly for the purposes here involved. The criminal law is almost wholly ineffective for controlling conduct undertaken by governmental officers for public purposes.

The criminal law can have an impact on conduct by Government officers such as embezzlement, stealing, and accepting bribes, that is undertaken for reasons of private gain. But where an officer is acting in pursuit of governmental interests, even if he is acting excessively or beyond the law, experience in this country and elsewhere demonstrates that criminal statutes rarely deter and that the occasional imposition of punishment strikes many as unfair. Prosecutors tend to exercise their discretion not to prosecute; juries are reluctant to convict, and judges interpret such criminal laws narrowly.

The Congress, in support of the fourth amendment prohibition on unreasonable searches and seizures, enacted a criminal statute more than 50 years ago making it a misdemeanor for a Federal officer to participate in an unlawful search and seizure (18 U.S.C. 2236). Although there have been hundreds of cases in which evidence has been excluded or convictions reversed because of unlawful searches and seizures, apparently no officer has yet been prosecuted. The popular reluctance to prosecute officers for doing their duty as they see it, no matter what the law may have been, apparently applies to all conduct, even the brutal killing of innocent people such as that engaged in by Lieutenant Calley.

There are existing criminal statutes which might appear to apply to some of the conduct in which the CIA has been involved. Participation by any U.S. officer in the Bay of Pigs fiasco would appear to have been a crime under 18 U.S.C. 960:

"Whoever, within the United States, knowingly begins or sets on foot or provides a means for or furnishes the money for or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined not more than \$3,000 or imprisoned not more than three years, or both." (Perhaps the CIA concluded that no violation was involved since their efforts against Cuba were channeled by way of Guatemala rather than directly "from" the United States.)

Another relevant criminal statute is 18 U.S.C. 956 which provides that:

"If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace \* \* \* and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspiracy, each of the parties to the conspiracy shall be fined not more than \$5,000 or imprisoned not more than three years, or both."

Even 18 U.S.C. 112, designed to protect officials of foreign governments with which we are at peace, has—as a criminal statute—been ineffective in restraining officers of the CIA:

"Whoever assaults, strikes, wounds, imprisons, or offers violence to the person of a head of foreign state or foreign government, foreign minister, ambassador or other public minister, in violation of the law of nations, shall be fined not more than \$5,000, or imprisoned not more than three years, or both."

Whoever, in the consummation of any such acts, uses a deadly or dangerous weapon, shall be fined not more than \$10,000, or imprisoned not more than 10 years, or both."

Criminal statutes can serve an educational purpose, but they cannot be relied upon as an effective means of restraining Government officers acting under color of authority or in pursuit of some governmental purpose.

Further, it is often harmful even to try to enforce legal restraints on official behavior by means of the criminal law. For example, it is contrary to the Con-

stitution for a Member of Congress or of a State legislature to vote for an unconstitutional statute; and it is contrary to law for a judge to decide a case contrary to law. But in neither case would it be wise to make the mistaken official action into a crime.

**B. EFFECTIVE REMEDIES REQUIRE LEGISLATION DEALING WITH (1) INFORMATION, (2) ADMINISTRATIVE ENFORCEMENT, (3) STANDING, AND (4) JUDICIAL REVIEW**

Causing governments to comply with lawful restraints on their behavior is a matter of establishing checks and balances. The U.S. Government respects the Constitution (when it does) not because it or its officers are threatened with punishment by a super policeman, but because of a noncriminal system of law enforcement. Essentially, this alternative system of causing respect by the Federal Government of legal restraints on its conduct requires:

That information about the alleged wrongdoing come into the hands of someone who cares about it;

That those in the government be asked to stop; or, if they continue the conduct, to contend that they have a right to do so;

That someone with standing take the matter to court to have that dispute settled; and

That if the plaintiff is successful the court order the officers concerned to refrain from the unlawful conduct in the future.

Even for public, domestic matters where we pride ourselves on our Government under law it is useful to note that the courts not only refrain from punishing an officer who has exceeded his authority; they rarely provide compensation to make up for the wrongs previously done. Those blacks who were unconstitutionally deprived of an integrated education, received no compensation either from the Government or from the officers who acted contrary to the Constitution. As a society we settle for a future-oriented order that says: "From here on, stop engaging in that wrongful conduct." Where property has been taken unlawfully by the Government, compensation is owing and paid. But even there, the individual officer who may have wrongfully taken the property is not treated as a wrong-doer.

This is the basic model for bringing law to bear on our Government. In the case of the CIA the secrecy of the conduct and the public interest in keeping many matters secret complicate the problem, but do not change its basic structure.

**1. Information**

Congress should by legislation do what it can to make sure that information about possibly unlawful conduct gets into the hands of someone who cares about it. Because of the sensitive nature of the information, it is proposed that there be established a special office within the Department of Justice, charged with enforcing the law, that would have a small staff with high-level security clearances and lawful access to such information as they might need. We cannot require that all information of possible wrong-doing be made public or even turned over freely to members of Congress. To maximize the chance of questions being raised it seems desirable to establish an office within the Government but outside the CIA which is assigned the role of law enforcement and which has lawful access to all necessary information.

Five legislative rules could be enacted that would tend to provide this office with enough information to permit it to carry on its job:

(a) It could be authorized by law to receive any information from anyone. It could be provided that notwithstanding any other rules about classified information, libel laws, executive privilege, or confidentiality, no officer of the United States and no other person could be punished, disciplined, or held civilly liable for having turned over information to the special office.

(b) Employees could be required to turn over information of known wrongdoing by others. All employees and officers of the United States could be required to disclose to the special office any information which they had about conduct that they had reason to believe involved violations of the Constitution or of Federal law, except to the extent protected by the privilege against self-incrimination.

(c) As in various other areas of the law where the risk of secret violations is high, a system of rewards could be established for those providing the special office with information disclosing unlawful conduct.

(d) Protection from criminal prosecution by advance disclosure. It could be provided that any officer or employee of the United States who should have fully



disclosed to the special office in advance the facts about conduct in which he or she was about to engage, had provided the office with a reasonable time within which to respond, and had received no recommendation from the office to refrain from such conduct, would not be subject to criminal prosecution for engaging in that conduct. Since one cannot rely on criminal penalties in any event, such a potential exemption from criminal penalties might well be worthwhile in producing information about conduct which should be enjoined.

(e) The right to acquire information upon request. The special office should be given powers of investigation. Without, perhaps, opening it up to broad-scale "fishing expeditions" that would interfere with the legitimate work of CIA and other agencies, legislation should require all officers of the Government to cooperate with the office, to answer specific questions, and to supply documents in response to requests unless to do so would create an unreasonable administrative burden. The special office might also be given the power to grant immunity from criminal prosecution.

Allowing, say, 6 or 12 more officers access to classified information should pose no significant additional security problem for the United States. Yet such rules about information should go far to put a law enforcement office in a position where it could proceed.

## **2. Administrative enforcement**

In establishing an office to be concerned with enforcing what are often rules of international law against the United States, the Congress might well want to give that office the role of helping enforce treaties and international law generally, against others as well as against the United States. A broader law-enforcement perspective might not only improve the quality of enforcement against U.S. transgressions, but stimulate greater efforts by this country to do what we can to hold other governments to equal standards.

A bill to establish such an office might be along the following lines:

(a) It would establish in the Department of Justice the Office of Assistant Attorney General, International Division. In addition to such other duties and responsibilities as might be assigned to that office by the Attorney General or by other legislation, the Assistant Attorney General, International Division might be concerned with conduct by officers and employees of the United States and of foreign states that is contrary to customary international law, contrary to multilateral or bilateral treaties to which the United States is a party, contrary to binding decisions of the Security Council or other international organizations of which the United States is a member, or otherwise contrary to the Constitution or laws of the United States in so far as they relate to international matters.

(b) With respect to all such matters the Assistant Attorney General could be given responsibility:

(i) To participate in CIA's training programs and to initiate notices, warnings, pamphlets and other educational measures designed to maximize initial compliance with such laws and decisions;

(ii) To receive from any person and to safeguard information about actual or threatened conduct that might be contrary to such law and decisions;

(iii) To investigate such situations;

(iv) To make recommendations to any person as to future conduct from which it was deemed necessary or desirable that he or she refrain in order to avoid a violation of law. Any officer or employee of the United States who received such a recommendation in writing could be required to comply with it unless and until he or she received explicit written orders to the contrary personally signed by a cabinet officer and reciting that the cabinet officer was fully aware of and had read the recommendation in question and believed the conduct to be lawful;

(v) To seek in the courts of the United States or of any foreign country having jurisdiction a judicial determination enjoining an officer or employee of the United States or of any other government from engaging in criminal or other conduct in violation of international law or in violation of other rules of law relating to an international or foreign matter;

(vi) To devise and recommend to the Congress, to the President, and to any other department or office of the U.S. Government measures of every kind intended to improve the international legal system, particularly the means for causing compliance and for coping with problems of noncompliance.

### 3. Standing

To increase the availability of judicial review, legislation should make clear that standing in the district court to seek to enjoin unlawful conduct by an officer or employee of the United States would exist for:

- (a) Any person directly affected or threatened by such unlawful conduct, whether or not a citizen and whether or not within the United States,
- (b) The Assistant Attorney General in charge of enforcing the law against such conduct; and
- (c) Any Member of Congress.

Without giving everyone standing, it would seem desirable to open up the possibility that members of Congress could seek to enjoin such violations.

### 4. Judicial review

28 U.S.C. 1350 now provides:

"The district courts shall have original jurisdiction in any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

This should be broadened to permit suits to enjoin continued violations not only of international law and treaties but also of the Constitution and laws of the United States.

One other form of judicial review seems appropriate. If action by U.S. officers overseas results in a taking of property without compensation, persons affected should be free to recover compensation for such taking. For reasons of intelligence we might, for example, wish to take all the files out of a psychiatrist's office in Paris. If the interests of the United States are so great that we should break and enter the office of an innocent person and go off with some of his property, there is no reason in justice why, if he can establish that fact, the United States should not compensate him for his property as we would in this country for property taken by eminent domain.

A third provision should establish and clarify the power of federal courts to hold proceedings in camera to the extent necessary to protect security information that might be involved.

### C. CONGRESSIONAL OVERSIGHT SHOULD SUPERVISE—NOT BE A SUBSTITUTE FOR—AN ENFORCEMENT AGENCY

Congress is not likely to forget the need for a congressional role as watchdog over the activities of the Central Intelligence Agency. But a congressional committee is no substitute for the full-time day-to-day concern with law enforcement that has been suggested above and that is required to prevent abuses of the law by Government officers. Congress must not take to itself the job of trying to be a watchdog over an administrative agency to prevent corruption or bribery. Nor should it suggest substituting itself for the kind of judicial review that should be available for administrative action.

Not only is it easier to supervise an enforcement agency than to be a substitute for one, it is likely to be far more effective. A special office in the Department of Justice can have substantially full access to classified information. If the role of the office is defined with sufficient clarity the principle of checks and balances will be set into operation. Both Justice and CIA will have friends on the Hill. Congress will retain at least its present powers of subpoena. Whereas CIA may not be required to make detailed reports on its operation, the special office in Justice can be asked to make regular reports in some detail on what it has been doing. How many allegations of possible wrong-doing were received? How many investigations conducted? How many recommendations issued? What steps has it taken to make sure that all officers and employees within CIA are aware of the legal restrictions on their activities and the means for reporting possible illegal action? Starting with such information which could be freely in the public domain, a congressional committee would have a far easier task than they have at present.

I have no recommendation as to the precise form of a congressional committee. I make the strong recommendation that whatever form of committee is established, that an office be established within the Department of Justice charged with enforcing legal restrictions that affect foreign or international conduct, and that the congressional watchdog committee supervise not only CIA but also supervise that office and see that most of the day-to-day work that causes day-to-day respect for law is in fact being undertaken there.

## IV. NO BLANK CHECKS

## A. THE CONSTITUTION PROVIDES THE BASIC FRAMEWORK

*1. The Government should not act except pursuant to law*

The problem of covert activities by the executive branch should be seen in terms of the basic principles and framework of the U.S. Government. The Federal Government is not simply restrained by the Constitution, it is a creature of the Constitution. Except as the Constitution grants it powers, it has none. Wherever the government operates it cannot ignore restrictions imposed upon it by the Constitution, particularly those of the fifth amendment.

"nor shall any person \* \* \* be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Constitution provides the basic approach of the U.S. Government. It provides that the Federal Government may not behave arbitrarily toward any person. If he or she is to be deprived of life, liberty or property it must be in accordance with some substantive rule of law and with respect for fair procedures. The amount of process that is due may change from circumstance to circumstance, but in every case there must be law authorizing the conduct and a legal procedure in which to test whether the law is being followed. The Executive may be given an area of discretion, but there must be bounds to that area, and judicial procedures to determine whether or not the executive has acted outside those bounds and therefore contrary to law.

Congress cannot hope to catch up with illegality by slowly outlawing one particular kind of conduct (like torture) after another (like assassination) as it discovers after the fact what has been going on. Congress should make clear by legislation that the basic restrictions of our Constitution apply:

1. An officer of the Government must point to the law that makes his conduct lawful,

2. The law must not delegate unlimited discretion but must establish reasonable standards, and

3. There must be a fair procedure for reviewing governmental action.

In authorizing conduct, Congress should of course authorize an area within which the President is free to exercise his discretion. The famous case of *United States v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936), often cited for its recognition of the necessity for executive discretion, upheld a comparatively narrow delegation. A joint resolution of Congress authorized the President to make certain findings of fact and to issue a proclamation that would make it unlawful to sell arms in the United States "to those countries now engaged in armed conflict in the Chaco." The very litigation over such limited Presidential discretion suggests the Constitutional necessity of far narrower limits on discretion than those heretofore assumed by the CIA. Without both a substantive line and judicial review, lawless behavior is free to spread like a cancer.

*2. Legality should not depend upon secrecy*

The Constitutional framework of the fifth amendment is not limited by the concept of secrecy. Within this country no-one would argue that the law permits the Government to do things in secret that it cannot lawfully do in the open. Undoubtedly, officers of the Government acting in the public interest, and faced with a situation of apparent necessity, sometimes secretly exceed a lawful restraint. This fact of life provides some flexibility as well as some dangers. But lawfulness cannot depend upon secrecy. Things that are lawful if done in secret cannot retroactively become illegal if they become known. Conduct that is unconstitutional if known cannot become valid by being kept secret.

Congress should approach the problem of covert operations by considering what the legal consequences should be if various matters that were intended to be kept secret become fully public. Those consequences can then be arranged so that they do not unduly restrict the freedom we may want officers to have. It is useful to invent some hypothetical cases—including some that appear to fall on one side or the other of a sensible line—and ask what a U.S. district court should be permitted to do if the facts were now fully public and undisputed.

For example:

(1) An official of the CIA admits that he is supervising agents in Paris who are systematically using binoculars and electronic devices in ways that would constitute an invasion of privacy in this country to gather intelligence believed to be of military importance to the United States. (Perhaps, no matter who the plaintiff—even a U.S. citizen—the district court should here dismiss any criminal charges and deny both damages and injunctive relief.)

(2) An official of CIA admits that he is supervising agents in Paris who are systematically kidnapping and torturing people—including torturing some people to death—in an effort to gather intelligence believed to be of military importance to the United States. (Here, under proper laws, criminal penalties, damages and injunctive relief should all be available in an action initiated by a proper party.)

(3) An Italian socialist who is in favor of bringing Italian Communists into a coalition government in Italy finds himself continually harassed by persons hired by the CIA to prevent him from printing and distributing pamphlets, from organizing meetings, and from speaking. He asks the district court in the District of Columbia to enjoin the CIA from instigating persons to interfere with his freedom of speech. The facts are undisputed. (Here, I hope, the law would permit the district court to grant an injunction.)

Congress should authorize the courts to do those things that it would want them to do when and if various categories of cases might become public and might be brought to court.

### *3. Legality should not depend upon citizenship*

Consistent with the constitutional language of the Fifth Amendment protecting all persons, Congress, in authorizing the members of the intelligence community to engage in certain conduct, should not authorize them to do more against foreigners than they can against U.S. citizens. Under international law and logically our Government has more rights over U.S. citizens than over aliens. If the national security interest does not justify tapping the phone of an American citizen in Tel Aviv it should not justify tapping the phone of an Israeli citizen there. In a world concerned over American claims of superiority, it would seem unwise to depart from the Constitutional standard of treating all persons equally to the maximum extent possible.

### *4. Acting abroad does not avoid Constitutional limits*

The Government is not free to become arbitrary by stepping outside the territorial limits of the United States. If in a foreign country the United States is subjecting to trial a civilian who is not a member of the armed forces, it may not use a court martial but must accord the constitutional safeguards of a jury trial. *Reid v. Covert*, 354 U.S. 1 (1957). Acting abroad may make an enormous factual difference, but the Executive is not free to ignore the Constitution by acting abroad, even against aliens. The difficulty the Supreme Court had in upholding the legality of the execution abroad of General Yamashita, an alien, demonstrates both that being abroad may make a difference, and that Executive action abroad must be authorized by the Constitution and by Congress. There the Court found:

(a) that Congress had legislated within its Constitutional power to define and punish offenses against the law of nations;

(b) that Congress had authorized a military commission as an appropriate tribunal to try violations of the laws of war;

(c) that Congress had provided for review of the tribunal's decision by military rather than judicial authorities;

(d) that the defendant had been charged with a violation of the laws of war; and

(e) that the commission had authority to proceed with the trial, and in doing so had not violated any military, statutory or constitutional command.

If the U.S. officers overseas were free to engage in covert operations that deprived aliens of life, liberty or property without constitutional restraint none of that reasoning would have been necessary.

One need not argue the precise limits on what the Constitution might permit in the absence of legislation to argue that Congress ought to respect the constitutional framework and provide laws consistent with that approach. That approach requires congressional confirmation of the principle that CIA officers like everyone else acting for our Government must find lawful authority for

their actions. And when Congress chooses to authorize particular activities it should act in accordance with those principles that do not exclude from constitutional restraint actions that are secret or foreign or impinge on aliens. But the starting point is to make abundantly clear that no one who acts for the United States has blanket authority to do what they want, where they want, free from any concern with law.

#### B. LEGISLATION SHOULD PRECLUDE ANY CLAIM OF BLANKET AUTHORITY

For years the CIA has operated as though it received almost unlimited authority when it was authorized by Congress "For the purpose of coordinating \* \* \* intelligence activities \* \* \* to perform such other functions and duties related to intelligence" as the National Security Council might direct. In view of this background, and the excesses to which it led, Congress should expressly wipe the slate clean and make it apparent to all that the CIA has no inherent or general authority and can only do those things that Congress expressly authorizes it to do.

Such a statute should not establish criminal penalties, but should make it as clear as possible to those in the intelligence community that in the area of potential violations of international law nothing is to be done by the United States except that which Congress has authorized. The Necessary and Proper Clause of the Constitution would appear to assure that such a statute does not constitute an intrusion upon Executive power.

#### *Suggested statute*

A first rough draft of such a law might be along the following lines:

"All officers and employees of the Central Intelligence Agency, the Department of State, the Department of Defense, other agencies within the intelligence community, and other branches of the U.S. Government have no exemption from the criminal, revenue, or other laws of the United States by virtue of their employment or position.

"No officer or employee of the United States should in time of peace engage in any act within or without the territorial jurisdiction of the United States that is in apparent conflict with the Constitution, or with the general laws of the United States, or with any treaty to which the United States is a party, or with customary international law, or with the law of a foreign state within whose jurisdiction the act takes place, except pursuant to an Act of Congress affirmatively authorizing the act in question.

"Any officer or employee of the United States having reason to believe that any other officer or employee of the United States is engaged or is about to engage in conduct that has an impact outside the territory of the United States and is in apparent violation of the Constitution or laws of the United States, or of any treaty to which the United States is a party, or of international law, or of the law of the country in which the conduct has its impact, shall promptly communicate the relevant facts to the Assistant Attorney General, International Division, Department of Justice by means established by that office, unless those facts have previously been communicated to that office. Failure to comply with this section shall be grounds for administrative disciplinary action; willful and repeated failure to comply shall, at the request of the Attorney General, be grounds for removal from office by order of a district court."

Even in drafting such a denial of blanket authority for intelligence operatives to violate other laws the intimate relationship between rule and remedy is apparent. All laws that permit some kinds of intelligence gathering or some kinds of covert operations need to be drafted in terms of their legal consequences.

#### V. RELATE RULES TO REMEDIES

Congress should consider all rules about the overseas behavior of U.S. officials in terms of the remedies involved. Law is not a single line drawn between what is permitted and what is not. What is a proper line for a public official depends upon the consequences of crossing it. An army tank in maneuvers may destroy a barn. We may not want a judge to supervise the maneuvers, but we do want him to tell the United States to pay for the barn. The Secretary of State may refuse a man a passport. Here the court will not award damages nor will it design new passport regulations; rather it may enjoin the Secretary from denying passports in the absence of legislative authority. In other circumstances an officer of the United

States, acting under color of authority, may engage in such extreme conduct that only criminal penalties are appropriate. By relating rules to remedies in practical terms, there is little risk that law will unduly constrain the Executive.

#### A. THE EXECUTIVE RETAINS ENORMOUS DISCRETION IN ANY EVENT

No matter how tightly Congress may choose to restrict Executive action, there is little risk that the President will be crippled and unable to deal with an urgent problem. For some hundred and fifty years, say from 1790 to 1940, our Government operated without secret peace-time commandos roaming the world free from legal controls, and did not do so badly. On those matters that were most important to the United States—those that happened within its own territory—the Executive was subject to the full constraints of the Constitution. Those who fear the effects of legal controls over our foreign operations must overcome years of history in which the problem has not been that of an Executive handicapped by law and withering from excess constraints.

Applying the Constitution fully to the Executive's domestic actions has not crippled the Federal Government nor made the Executive too weak to cope with problems that come along.

##### 1. *Valid emergency and war-time powers remain*

Congress should enact laws that authorize the kind of conduct in which they want the United States to be engaging in normal everyday conditions—the kind we have today. There is little reason to expect the future to be more orderly than the present. If we treat today's conditions as an emergency in which the Executive should be free from legal restraint we are likely to find ourselves having few legal restraints, ever. In a genuine emergency, in times of armed hostilities, or in conjunction with a declared war, the President will have additional powers. The courts routinely find that ordinary peace-time legislation does not legally bar executive action needed to face a crisis. Whatever the statute, a court will find that the President has sufficient lawful authority to deal adequately with an urgent problem.

##### 2. *The Executive has a practical power to construe the rules*

The executive branch retains, under any foreseeable circumstances, an enormous practical power to construe the laws as it believes that they ought to be construed, and to act on the basis of that construction. In many cases the entire matter will have been dealt with and become moot without ever getting to court. Even where the action does get to court and a court later finds that the rules have been stretched, the judicial remedy will at most be an order to refrain from such conduct in the future. We like to think of ourselves as having a government under law—and we do—but consistent with our view of the law the Executive is free to act first and to argue about the law later. The fact that we are satisfied if Government officers later comply with a judicial decision means that the Executive branch has great freedom to engage in individual transactions. The judicial branch operates as a restraint on a course of conduct. And as to any course of conduct Congress has the ability to correct the rules if it wishes.

##### 3. *Secrecy provides even greater scope to the Executive*

Judicial deference to Executive action in time of emergency, and the lawful right of the Executive to act first and argue later, apply in areas of open Presidential decision, such as those involved when President Truman seized the steel industry during the Korean war. Where the conduct involved is secret, the practical power of the President to construe the rules as he likes becomes far greater. The fact of secrecy provides every official with a penumbra of *de facto* power in excess of that power which a court might find him to have if the issue ever got to court. Congressional concern that the enactment of legislation setting some limits on covert operations would create an undue practical problem for the United States, must take into account the *de facto* power of officers to interpret rules in a way that will let them deal with the practical problem.

#### B. COMPENSATION FOR PROPERTY TAKEN IMPOSES NO OPERATIONAL RESTRAINT

The fifth amendment provides,

“\* \* \* nor shall private property be taken for public use, without just compensation.”

At a time when the United States is vigorously trying to persuade other countries that they should pay just compensation for any property owned by Americans which they may take, it seems clear that United States law should provide that our Government will pay just compensation for any property owned by aliens that we take. If the Cuban Government expropriates American-owned property within Cuba, we insist that international law requires that the Cuban Government pay just compensation. Certainly, if it became known that Cuban spies operating with the United States had destroyed or stolen American-owned property, the least that international law would require would be just compensation for the value of that taken. We should so arrange our own law that we are in a position to do what we contend international law requires. If a psychiatrist in London could establish that agents of the U.S. Government had burglarized his office and, in a vain attempt to conceal their action, had blown up the office destroying his furniture and files, that psychiatrist should be able to recover compensation in a U.S. court, whether his nationality was British, Russian or American.

The fact of secrecy may often make such a remedy ineffective; in other cases it will serve to keep proper limits on the behavior of our spies.

#### *Suggested statute*

The substance of an appropriate statute would presumably make explicit that the Court of Claims or a district court had jurisdiction to hear a claim that any citizen of the United States or of a country with which the United States was at peace had been deprived of life, liberty or property by an officer, employee or agent of the U.S. Government acting within the scope of his employment within a country with which the United States was at peace, and at a time when there were not open hostilities, and that, upon establishment of that claim, the court should award just compensation by the U.S. Government (chargeable to the appropriations of the responsible agency).

#### C. INJUNCTIVE RELIEF SHOULD BE WIDELY AVAILABLE

The best judicial remedy against governmental misconduct within the United States is the suit to enjoin future misconduct by an officer. This operates to protect the population against protracted courses of action that are deemed by a court to be contrary to law without much judicial intrusion into the day-by-day administration that is best left to Executive discretion.

Presumably officers of our Government should not be acting contrary to the law of the country in which they are located except with good reason. One good reason to ignore foreign law might be that it is unduly restrictive on such things as free expression. To deal with this problem it might be provided that U.S. Government officers should not normally violate local foreign law by conduct that would also be illegal within the United States. The exception would be where the conduct in question had been expressly authorized by Act of Congress.

#### *Suggested statute*

The substance of a statute authorizing injunctive relief might be along the following lines:

"1. It shall be contrary to U.S. law for any officer or employee of the United States intentionally to commit an act within the territorial jurisdiction of a foreign state with which the United States is at peace, which act is both contrary to the law of that place and would be unlawful if committed within the District of Columbia unless (a) the act is for the purpose of gathering, receiving, holding, or transmitting information required by the U.S. Government for reasons of national security, or (b) the act has been expressly authorized by an act of Congress.

"2. An act made contrary to law by the foregoing section is not thereby made criminal, but the district court of the District of Columbia shall have jurisdiction of a suit to enjoin such an act brought by the Attorney General, by any Member of Congress, or by a person specially affected or threatened thereby."

#### D. CRIMINAL PENALTIES ARE APPROPRIATE FOR INTENTIONAL HARM

Although the criminal law, as discussed above, is not an effective way of preventing governmental misconduct, criminal statutes do have an educational

benefit. Further, public morality would seem to require that conduct like torture and murder by U.S. officers be made criminal, and that when cases involving such conduct come to light there be prosecutions. Whatever the local law may say, there are some things we do not want U.S. Government officers doing.

Other conduct by U.S. officers overseas, like capturing someone or holding him in custody, will sometimes be permissible (as when authorized by an extradition treaty or when Canada or Mexico might consent to our following somebody across the border) but at other times would be outrageous and could closely resemble torture.

#### *Suggested statute*

A draft statute along the above lines might go as follows:

"Whoever, being an officer or employee of the United States, whether or not ordered by a superior officer and whether or not acting for reasons of national security or intelligence, kills or injures (except in self-defense) or tortures or practices extortion on any person anywhere within or without the territorial jurisdiction of the United States, or forcibly kidnaps, arrests or detains any person within the territorial jurisdiction of any foreign country with which the United States is at peace except in accordance with the law of that place, or conspires or explicitly orders or explicitly authorizes within or without the territorial jurisdiction of the United States any such act, shall be fined not more than \$20,000 or imprisoned for not more than 20 years, or both."

#### CONCLUSION

Two hundred years ago this country was founded on certain moral principles. The Constitution provided for a government under law; and gave the Congress both broad powers and broad responsibilities. This Congress, and this Congress alone, can return us to a government of law based upon principles in which we believe.

Mr. FISHER. Before turning to the legislative techniques of how to control covert activity, one has to know why one wants to control it. To draw the line between what is right and what is wrong, you want to know what is wrong about what is wrong.

I feel very strongly that covert operations which are in violation of the laws of a foreign state and would be in violation of the law of the United States if they took place here, are, in almost every case, wrong morally, wrong pragmatically, and wrong legally.

First, the moral question: We don't talk about morals very often today. We get pragmatic. But what was wrong with Hitler was not that he didn't pass the right statutes or that he failed to succeed. He was just plain wrong, doing bad things.

If we deserve to prevail in any international contest, it is because we are applying some moral standards to ourselves that are better than those being applied by other countries. Otherwise, we have no moral right to prevail and no legitimate basis to claim that we are right and they are wrong.

When we set up the Constitution, 200 years ago, we knew that some truths were self-evident, that there were certain unalienable rights, some situations must be judged, as we said in the Declaration of Independence, "by the laws of nature and of nature's God," and by according "a decent respect to the opinions of mankind."

Much of what the CIA has been doing cannot stand that test and that is why it should stop.

But even pragmatically—even if we can avoid the moral question—CIA covert operations fail in terms of crass pragmatism in my judgment. We have pursued wrong ends by wrong means at high cost.

As to the ends, the underlying assumption of CIA operation has been that the world is one vast contest between bad guys, Communists,



and good guys—us; that our objectives are the mirror image of theirs; that they want to dominate an African country, and so our goal is to dominate. They have assumed that it is to our interest to see the world as a single overall confrontation. But, whatever the Soviet goal may be, imposing our views upon the world is not our proper goal.

If we stop and think we will discover what we really want. They may want domination; we really want others to be free. They may want to force all issues into a single question of communism; we want individual issues dealt with on their respective merits. They may want to promote world revolution; we don't. We want to promote international order. They may want to promote disregard for "bourgeois" ideas of law, individual freedom, private property, and private interest; we are trying to promote respect for those goals. Our true goals are not the reciprocal of theirs.

Basically, the game of nations is not one in which our objective is to have others lose all the time. We are trying to get an international system going in which the stakes in any one unit of conflict are small, and in which the game is fair enough so that others will play the game, so that they can win, and we can win. We should lose some, too, because sometimes we are wrong and we shouldn't win.

We care more about the international process than about who the official is in some other country.

We are trying to build a structure that is fair and acceptable. We do not want other countries to dance to our tune. It is not a world in which foreign leaders are secretly in our pay and people with whom we disagree, mysteriously die, and lose power. We expect and want a world that is filled with different ideas, different goals, and different values. We look for a world in which other countries are willing to play that game because sometimes they can win at it, too.

We are not against communism as our primary objective. We are for freedom.

To a large extent, what we have done wrong is to play the wrong game. We have taken the game from our adversaries' perception of the game, which is not ours. In playing that game we have used wrong means. In the first place, we are not all-wise. Even with a CIA "program," giving the cast of characters, we don't know who the successor will be to that player if we push him off stage.

I find that short-term victories in a particular third world country are something we can't judge. We are not that smart. If the CIA had been operating in Germany in the 1930's, what would we have been doing? People cite Hitler as a case where covert operations would have been justified. I say no. I can see the CIA saying, "Boy, there is a strong anti-Communist coming along. We have to support this guy. He has a leadership position. We don't like him, but let's support someone who can be a strong leader, perhaps Hitler, himself."

I look at other situations. I look at Egypt, where the Russians had 20,000 Soviet troops. We were trying to prevent that. It turned out it was the best thing that ever happened for us. The Egyptians had 20,000 Russians around for several years, and the Egyptians kicked them out by their own decision. Now Sadat's pro-American policy is popular with everybody. They didn't like having 20,000 Soviet soldiers in their country.

We are not that smart. We would have opposed Tito as a Communist. Yet Tito's version of communism laid the way for the Chinese to be Communist without being pro-Soviet. If he hadn't set the model that you can be Communist and against the Soviet Union, we might have had the U.S.S.R. and China combined against us.

I don't think we are that wise in knowing what we want to have happen in the short term.

When we do it in secret, it makes it even less likely that we are wise. We don't have the free press; we don't have the criticism; we don't have the publicly-responsible Members of Congress bringing their views to bear. Once CIA shuts out the light they are groping in the dark for the right objectives.

I think they fail too often, but basically the means they are pursuing are inappropriate to our goals. That is, they say we must fight fire with fire. Okay; that is what war is about, if there is a conflagration—an all-out authorized use of force. But we are fighting a bunch of arsonists, and you don't fight arsonists by setting fires. You don't do the very thing we are trying to prevent by doing it ourselves.

We have crime in this country—here at home, where our interests are so great. We don't say, "Let's have the police commit crimes to get the murderers, or let's have delinquent police to combat juvenile delinquency. Let's have corruption of government in order to answer the corruption of the Mafia."

That is not the way we operate. Let's take the high ground. Let's use the weapons at which we are good. We are not very good at dirty tricks. Our strength does not lie in poison dart guns. We are handicapped in fighting by secret, underhanded means. Fortunately, we are restrained by moral principles, and one of the most powerful things is we cannot keep our dirty linen private. From the time of Peter Zenger to the Pentagon papers, we have prided ourselves on having a free press disclosing what we do. We cannot expect that to be abandoned by one more assertion of national security. We should join the battle where we can win. Let's compete in terms of candor, generosity and tolerance for the views of others. We are far more likely to gain world support on that battlefield than by competing in terms of subversion, deception, bribery, illegality, and other forms of dirty tricks. Let's use good weapons, like the Marshall plan; not bad weapons like the Bay of Pigs.

Covert operations involve very high costs. They corrupt those we are trying to help; they corrupt us and they corrupt the system. You all remember that Groucho Marx once said he would not join any club with low enough standards to let him in. If it accepted him, its standards were too low. I would apply that same rule to the foreign politicians we are helping. If we find some nice, attractive hero abroad we think is a good democrat, a potential leader, and he says, "I am prepared to be in the pay of a foreign government as long as it is done secretly: I am prepared to violate the law of my country and to become indebted to a superpower on the outside with covert money." If those are his standards, then he is not good enough for us to help.

Anybody who will take American money only if he can lie about it to his fellow citizens—if he can become a political leader only by deception and dishonesty—is not someone we should support.

By definition the people we would be putting into power would be people who are corrupt, who could not hold office in this country because it would be unlawful for them to do so, to be receiving secret funds from a foreign country to carry on their public activity. I don't think we should do it.

We have seen what happens to the CIA when national security justifies something abroad; we find that in this country they hold a man for 3 years in solitary confinement because they suspect him, with no lawful authority to do so. Once we say our own judgment is so smart that we don't have to pay attention to law, we seriously handicap our ability to be effective. We tie our hands. In other countries we can no longer expose what the Soviets are doing, because we are doing the same thing. We can't complain about their subversion, because we are being subversive. That is no way to go.

I think the United States should decide what we want to do in the open; how we should respond if something is in the public record, and make the rules accordingly. Don't try to make legality by coverup. Don't say it is legal if you can cover it up. It can't be that way.

There is no way consistent with our Constitution in which conduct that is lawful becomes illegal retroactively because it has become revealed, and there is no way in which conduct that is unconstitutional or in violation of our law becomes lawful as long as we don't hear about it.

Covert operations must be dealt with by saying what are the rules we would like to have apply today if that operation became known, and then adopt those rules. They will not unduly constrain Government behavior.

Let me turn to the question of method. Essentially for a Government under law, as our Constitution provides, nothing is permitted except that which has been authorized. That is, any officer doing something must be able to say "Here is the law that authorized me to do it. There it is. I have authority for that from the Congress, from the Constitution." That is what says I can do it.

The second requirement is that Congress not delegate undue discretion to an executive official. The administration frequently cites the *Curtiss-Wright* case as a case upholding executive discretion. It is a fine case. Do you know what the issue in that case was? After much litigation, it got to the Supreme Court, and it was held that the Congress could delegate the power to the President to put an embargo on particular weapons sales to particular countries where Congress had explicitly authorized it, indicated the finding to be made, identified the conflict—the Chaco war in Latin America—and given the standards which should apply. It was not an undue delegation to authorize the President to put the embargo into effect and make it illegal for Curtiss-Wright to sell arms within the United States.

You have to have some standards of law.

The third requirement is a procedure. Due process of law from the Magna Carta requires a process for considering the illegality of what happens.

As for the technique of control, essentially the criminal law does not work for governments. We don't enforce the Constitution here by saying that we will threaten to punish any Congressman for voting

for an unconstitutional statute. The criminal law does not work very well when people are behaving for public ends, for public reasons.

We have an alternative technique of controlling governmental behavior. Essentially it requires that somebody get information who cares about law enforcement, who has a concern for it, that they seek to stop the action in the future; that if the person who is doing the action contends it is lawful, there is a way for determining that matter, and if he loses, he is ordered to cease and desist: "Don't do it again."

The Government can deprive blacks of an integrated education for years. They can exceed lawful authority. We are satisfied with Government under law if there is a process for bringing a course of conduct under control, telling them to stop and don't do it again.

Now, Congress, itself, is not a law enforcement agency. Congress should not try to substitute itself for a law enforcement agency. It should be supervising law enforcement, seeing how the law enforcement is taking place and whether the rules are being respected.

Now, the essential feature is to have somebody in the Government—and I here propose an Assistant Attorney General in the Justice Department, International Division—to enforce international rules and constitutional rules affecting the behavior abroad, including behavior by foreigners against our treaties. We need somebody concerned with the enforcement of the international rules of the game, an office in the Department of Justice that is made lawfully able to acquire a great deal of information, and which, if they believe conduct is taking place improperly, can issue a formal recommendation to somebody to stop it, all still secret, if necessary. And if despite that recommendation the Government wants to go ahead, it should require the Cabinet officer in charge making a written order to engage in that conduct, knowing the Assistant Attorney General has recommended it stop, signing his name, and saying he believes it lawful.

Now, then you could have judicial review in camera, if necessary, on some of these things, or you can get to Congress at that stage. Congress can know about it. I would have Congress supervise and watchdog both the CIA and the law enforcement operation. They should be a watchdog over it, get their reports, find out how many complaints have been made, what they have done, what they have done about educating CIA officers to their duty, about their oath and regulations and about giving them notice that they do not have the authority to break the law generally.

The essential job of the Congress is to set up the laws, set up the discretion, and set up the means for causing respect for those laws in the first instance and then to be a watchdog over those functions. They will get complaints; people will hear; they can get information. I think you can deal with the secrecy problem. You can have 6 or 12 people in the Justice Department who have security clearances equal to anybody in the Agency, and they can set up procedures for receiving information.

It can be made lawful for anyone in the Government to give them information, despite any restrictions to the contrary, if it is done according to their procedures, dropped in the right slot in the Justice Department building where they can know about it. People can be encouraged to report wrongdoing. If they report conduct in advance

of doing it, with adequate time, they cannot be held criminally responsible. You can make it easy to get information to a fully cleared unit. Give them the job of restraining courses of conduct; "don't do this; don't do that."

The United States is not going to be done in by one dirty trick. It is a course of conduct that is causing the problem through drift and ever-expanding definitions.

You need to have an institutional basis, a way of saying no, of bringing those issues to the attention of courts and Congress: "Is this something you want to engage in?" Let Congress, if we need new laws, enact them, give new guidance. That is the role that Congress should have.

Frankly, when I think of coming to Congress for approval of things, I can't help but think of the visiting committee at the Harvard Law School, when Dean Griswold was at his prime. They would come to supervise the law school. There were lots of important issues going on, but it seems to me that the Dean brought to the committee such crucial questions as where to hang the Holmes portrait, what name to give to the new building, whether to subscribe to as many books in the library, and what about Chinese studies?—issues which could keep them busy, and let other problems go on.

I do not believe that asking somebody to come for approval is a way of adequately controlling what is done. Larry Houston, General Counsel for 24 years in the CIA, was not always brought in on things they really wanted to do. He discovered many things after they had been done. They didn't even go to their own lawyer who had all the sympathy in the world.

I have drafted some illustrative statutes. Each rule should depend on the remedy that is going to follow. If the United States burglarizes a building in London and, in order to conceal the burglary, blows it up and it becomes disclosed, and the guy gets caught, and the doctor says he wants to get paid for his building, it seems to me he is entitled to compensation, whether he is French, Russian, or whatever. Our Constitution says we should pay compensation for property taken in the public interest. If we blow up that property for a legitimate public reason, the United States should pay for it. At other times, disciplinary action is the only thing required. If somebody fails to disclose conduct he should have reported administrative discipline is all I would ask for.

On other occasions, you want an injunction: "Don't do it again." In some cases, such as those involving extortion, murder, or torture, you want criminal penalties because that is the kind of standards we have. So don't try to draw one line between what is good and what is bad. Is it all right for a Congressman to vote for an unconstitutional statute? Don't agonize believing that either it has to be legal for him to do it or he has to be punished for doing it. The line depends on the consequence. Law is a system for bringing consequences to bear on conduct. Do not use a good/bad line. We have elaborate techniques we use to control our governmental behavior when it is not secret. Those same techniques are appropriate here to the extent they can be. We don't abandon them. As I said at the beginning, conduct that is unconstitutional because there is no rule authorizing it, or because

there are no standards, or no procedures, doesn't become constitutional by sweeping it under the rug or trying to cover it up.

Thank you, Mr. Chairman.

Mr. GIAIMO [presiding]. Thank you, Mr. Fisher.

I think the procedure we will follow this morning with our three distinguished witnesses will be to hear from each one of you first. If you care to comment on the statements made by your cowitnesses, we would perhaps learn from listening to your arguments. Then we will have some questioning from members of the committee.

At this time we will hear from you, Mr. Bundy. It is a pleasure to have you before this committee. Welcome.

### **STATEMENT OF McGEORGE BUNDY, FORMER ASSISTANT TO PRESIDENT FOR NATIONAL SECURITY**

Mr. BUNDY. Thank you, Mr. Chairman.

It is a pleasure to respond to your invitation to appear before this committee for a general discussion of the disadvantages and advantages of covert operations conducted by the CIA. In this brief opening statement I will confine myself to a few propositions. I have stated them without detailed elaboration and often quite tentatively, and I believe the questions presented are not simple and the answers that will be right in the future are not easy to determine sharply today. Moreover, like many other citizens I am still learning from the extraordinary revelations of recent months; it has been particularly painful to learn for the first time of many things that happened while I was myself in government. I should also emphasize that for nearly 10 years I have been unconnected with this field and have seen to it that there was no connection whatever between the Ford Foundation and any secret Government agency.

This statement does not address particular episodes, except for a few that are clearly on the record already, and for two contrasting reasons. Those which I did know about in Government are not matters which I yet feel free to discuss publicly in detail, and those which have happened at other times are matters on which I do not have first-hand or authoritative knowledge. In any case I think it may be more useful for your purpose to try to suggest a limited number of broad notions.

First and foremost, the general presumption, in considering covert action, should in peacetime be against it. To put the point sharply, the general record of the last 20 years suggests that only too often the covert activities of the U.S. Government have cost us more than they were worth. There are notable exceptions, and they may give some guidance as to the kinds of exceptions which may be wise in the future, but the general proposition seems to me a strong one.

This proposition, if it is correct, has a very important consequence for the management and control of such operations. While in principle it has always been the understanding of senior Government officials outside the CIA that no covert operations would be undertaken without the explicit approval of higher authority, there has also been a general expectation within the Agency that it was its proper business to generate attractive proposals and to stretch them, in operation, to

the furthest limit of any authorization actually received. Indeed, as we now know, there have been cases, notably in assassination plotting, in which activities have gone far beyond any known authorization. I believe that these such inexcusable and unauthorized actions will not be repeated soon, and I think it is important to recognize that internal corrective action was taken well before recent revelations. But the general disposition toward activism in the operational offices of the CIA is another matter, and it is this general disposition that I think could be significantly constrained by a recognized and general presumption that covert operations are entirely out of order except when they have explicit and exceptional authorization.

Nor do I think it necessarily true that an explicit recognition of the exceptional character of such operations would reduce their value and quality in cases in which they were in fact authorized. On the contrary, I think a CIA with a much smaller and leaner covert intelligence capability could easily have greater specific effectiveness in its exceptional operations than the very large and overstaffed enterprise developed in the last generation.

The kinds of exceptions which might justify occasional covert operations are not numerous, and can be grouped under a few major headings.

First, in time of open warfare, the case for covert activities is significantly strengthened. There is still good reason to be wary in authorizing such activities, but the fact remains, when there is open conflict, that the balance of the argument over special secret operations shifts. In an unpopular and divisive war like Vietnam, it turned out to be dangerous to exaggerate the meaning of this shift, but the historical and logical case for this exception is strong.

Second, a critically important need for intelligence collection can justify special operations that would otherwise be undesirable. The early missions of the U-2 over the Soviet Union and the special missions authorized over Cuba just before the Cuban missile crisis are excellent examples.

I would have to take note of the fact, in light of Mr. Fisher's presentation, that those operations were in conflict with conventional international law.

The messy handling of the U-2 shoot down in 1960 is a separate matter with its own lessons, but the strategic arms race of the 1950's and the Cuban missile crisis of 1962 would have been enormously more dangerous without covert intelligence overflights.

Intelligence collection is often separated from covert operations in the thinking of intelligence administrators and other concerned officials. I think this distinction, like the parallel distinction in the field of counterintelligence, deserves reexamination. Both intelligence collection and counterintelligence have involved covert activity which goes well beyond conventional espionage and counterespionage, and such enlargements of activity often present many of the same dangers as covert actions of other sorts. The massive mail intercepts conducted in the name of counterintelligence are an excellent example of an abuse which would have been much less likely to occur if it had been adequately constrained by a plain requirement of approval from "higher authority."

Third, it is at least worth consideration whether there may not be need for some highly secret activity in emerging fields like those of international terrorism and nuclear danger. I do not know enough about these subjects to know what could or should be done, but I do not believe we can assert with complacency that there is no need for such work here that might go beyond intelligence collection. I find it hard to exclude the possibility that at some time in the future in these fields situations could arise in which covert action of some sort would be the least evil choice available.

Finally, it is not always wrong to give covert financial support to beleaguered democrats in countries where the continuing right of political choice is directly threatened by extremists of either the right or left. This is a sensitive and difficult area, and it is understandable that when excessive and heavyhanded intervention seems to be conducted in ways which assist only rightwing authoritarians, covert political action should get a bad name. But that is not the whole of our historical record, and I believe that heavy external support given by others for anticonstitutional totalitarians can legitimate support for genuinely democratic and constitutional forces.

The hardest cases in this category are those of appeals for help from political groups which are out of power and fear that constitutional and democratic process may be extinguished by the existing regime. Our experience in such anguishing cases suggests that it is not easy to make a genuinely constructive response in such situations. I conclude that there is a heavy burden of proof on those that would support the opposition in such situations, but I do not find this a happy conclusion.

In concluding let me suggest briefly certain general standards which ought to be met under all of the four kinds of exceptions I have suggested.

First, no operation should ever be covert if in fact it can be as effectively conducted in the open. Moreover, the justification for covertness must always be sought in the international situation and not in any hesitations about public or congressional opinion in the United States. An overflight should be kept private—when it should—primarily because its public announcement is so painfully embarrassing to the country which is overflown. A political subsidy, if and when justified on other grounds, can merit covertness only if that is important to its effectiveness on the scene—never because disclosure would be troubling at home.

The second general standard I would suggest is the converse—that a covert operation should never be authorized unless in fact it can be persuasively defended to the American public and to the Congress if it is exposed, and perhaps one should say when it is exposed. I should note that this proposition is almost the opposite of the traditional doctrine of “plausible denial.” Here the mistakes over the U-2 shutdown are instructive.

If from the first day of that affair the administration had explained what had happened and why the flights were authorized in the first place, it would have had much less trouble both here and abroad.

The case of the U-2 flights over Cuba is still more striking, for here the evidence obtained from the flights was published to the world



within weeks, and that evidence in itself provided complete and persuasive justification for the overflights, and in the larger sense I think also for their legality.

We will have fewer but better covert operations if all those who authorize them ask themselves severely how they will defend them to the American public and to the world in event of exposure.

Finally, it is my belief that the initiative in considering covert operations should be held firmly in the hands of political leaders and not operational activists. The Government should not be in a position in which there is constant pressure from large and zealous operational bureaus to make use of any and all of their alleged capabilities. Nor should there be indulgence in the pretense that covert operations can readily substitute for more visible forms of action. Usually they cannot. They are limited instruments, and the attempt to stretch them beyond their limited usefulness is usually both ineffective and costly.

Thank you, Mr. Chairman.

Mr. GIAIMO. Thank you, Mr. Bundy.

The next witness is Mr. Katzenbach.

We will be delighted to hear you at this time.

#### **STATEMENT OF NICHOLAS deB. KATZENBACH, FORMER U.S. ATTORNEY GENERAL**

Mr. KATZENBACH. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the committee, the fundamental problem with covert activities in support of foreign policy objectives is, of course, the fact that they are covert. Their success depends upon their secrecy.

And that simple proposition raises the central question for this committee: In a society which depends on a high degree of freedom of information to control the activities of government, is it possible to exercise political control over covert activities abroad? Is it possible to hold an agency charged with such responsibilities accountable in our political system?

As obvious as that point is, it is easy to lose sight of the spate of revelations about covert activities of the past conducted by the Central Intelligence Agency. Public debate sometimes seems to focus on the merits or demerits of a particular CIA action; on the judgments exercised by those conducting such activities, and on the morality of some techniques, or even on the question of whether or not we should covertly interfere in foreign political processes at all.

I start from the premise that some of our covert activities abroad have been successful, valuable in support of a foreign policy which was understood and approved by the electorate and Congress, and that situations may well arise in the future—and may even exist today—where our capacity to conduct appropriate covert activities could be an important adjunct to our foreign policy and to stability in the world.

I also start from the premise that some of our covert activities abroad have not been successful, and have been wrong and wrongheaded. In some cases we have grossly overestimated our capacity to bring about a desirable result and have created situations unintended and undesirable. And, from recent revelations, I would conclude that at least some of the ideas seriously considered were plainly wild and irresponsible.

Second, I would like to make it clear that I believe that covert means for collecting intelligence abroad are indispensable. When, in my 1973 article in "Foreign Affairs," I said I would be prepared to give up all covert activities, I excepted from that statement covert activities designed to gain intelligence.

There is a clear conceptual distinction between activities designed to gain intelligence, and activities designed to influence political acts directly. But I do not think that line is easy to draw in factual circumstances, and I think my article was somewhat glib in giving the impression that it could be.

[The article referred to, "Foreign Policy, Public Opinion and Secrecy," is printed as appendix VIII of these hearings.]

Mr. KATZENBACH. At any given time the extent of covert activity designed to influence political conditions in another country is very much a function of how one views the world and the role of the United States in it. Thus for a quarter century after World War II the commonly-held American perception of a competitive struggle with the Soviet Union everywhere dominated our foreign policy.

Both the United States and the Soviet Union were anxious to extend their influence as far as possible. Both countries employed overt and covert means to do so. Each country had the aim of installing and preserving in power governments favorably oriented to themselves; and the United States was extremely active in preventing Communist governments from taking over Third World countries.

Because we are an open society we made far more use of open techniques, such as economic and military aid, than we did of covert activities. Nonetheless it is my strong impression that since 1960 we have been making a major effort to wind down many of our covert activities, despite the recent revelations concerning Cuba, the Dominican Republic, and, of course, Chile.

Phasing down both our overt and our covert activities is a direct reflection of our changing world and a changing foreign policy. The countries of Europe and Japan have regained economic strength, and the potential of world communism for Soviet domination has been fractionated by the growth of nationalism and the reemergence of China.

I do not mean to sound sanguine in this respect. Nobody can look at Portugal today, the potential in Spain, the growth of the Communist Party in Italy, and the general decline of Christian Democrats throughout Europe without feeling some measured concern.

We will be faced for some time with the problems caused by the radical elements in the Arab world, and there is much turmoil in Southeast Asia as a result of the collapse of Vietnam.

I wrote in 1973 that I thought the time had come to abandon all covert activities—other than intelligence—designed to influence political results in foreign countries. That is still my position today. But I arrive at it reluctantly and with the belief that there are covert activities which are proper, useful, and moral. I do not think it is an easy conclusion to arrive at. Perhaps it is not even a wise one.

I arrive at this conclusion for a number of reasons, all involving judgments which the committee may not share with me.

First, I believe the revelations of Watergate and of the recent investigations into the intelligence activities of the CIA and the FBI

have created a great mistrust by the people of the United States in their Government. Unless one feels that the loss is greater than I would estimate it to be, I think abandoning secret activities abroad would help to restore public confidence in Government in this country.

Second, I think the public revelation of past CIA activities, while essential to restoring confidence in Government in this country, has done much to destroy CIA activities abroad. Further, unless we formally abandon them, I suspect we will get blamed for even more things, which we have not done, in the future than has been the case in the past. Given that situation, the game may not be worth the candle.

Third, I think we need to put our energies into formulating and articulating a foreign policy for the next several years which can command public consensus and public support. We simply do not have that today and I think it is important that we should.

Not only do I believe covert activities are particularly dangerous when there is not broad support for the foreign policy which they serve, but I fear that the emotional issues involved in covert activities will tend to detract from and confuse proper public debate as to what our foreign policy should be.

If we can achieve that consensus, and it is a clear one, then perhaps at some future date we could consider the possibility of covert activities in its support with such controls as we can devise. But in the interval I think they should be suspended.

Fourth, I have the feeling from recent revelations that secrecy becomes a source of power and a factor in misjudgment. Control over relatively large resources, unconstrained by the knowledge and views of many of one's peers, is itself a dangerous situation in a political democracy.

I do not wish to be understood as saying that I do not believe that there are not some steps the Congress could take which would alleviate some of the problems which have occurred in the past.

It could, for example, forbid any U.S. involvement in the assassination of foreign political leaders; forbid any U.S. involvement in directly providing weapons to any non-governmental group abroad—though it cannot probably effectively assure that money provided may not in fact be spent for those purposes.

It could insist on far tighter control in the executive branch of covert activities aimed at influencing political decisions abroad, and insist upon review, with written record, of all such activities at a very high level of Government, together with an appraisal of their success or failure.

And it could provide for review at specified periods—perhaps every 4 or 5 years—by an appropriate congressional committee.

I believe procedures of this kind would be helpful in bringing matters under control. I believe they would have the desirable effect of reducing clandestine activities, and channeling these into what I would regard as the more desirable and legitimate areas; for example, helping to fund activities on the part of local groups designed to express diversity of opinion within a relatively closed society.

What I do not know—and the committee must judge—is whether or not steps of this kind are adequate to deal with the problems of secrecy in the circumstances of today.

Thank you.

Mr. GIAMMO. Thank you very much, Mr. Katzenbach.

Mr. BUNDY, this morning's newspaper carried a story wherein Secretary Kissinger indicated—I may not be saying this exactly, but I am going to try—that we had given some clandestine assistance to countries neighboring Angola, obviously for assistance to certain forces in Angola.

Now, this brings me back in history to about 12 or so years ago when we began a very small effort, probably, of some covert or clandestine activity in Southeast Asia, particularly Vietnam and Laos. My concern is that the administration starts out in these areas in a covert way. Do we not run the danger of this being in fact the first step in an ever-increasing and escalating American involvement?

Can you tell us whether we in fact did begin small covert actions of that type in Vietnam back in those now historic days, and were they, in fact, the first American efforts of any kind in that country?

Mr. BUNDY. Well, I think actually, Mr. Chairman, the question which you ask is a complicated and, I think, a very important one. The case of Southeast Asia would take us back more than 12 years.

The historic history of the progressive and increasing involvement of the United States in Vietnam really begins in the Second World War and becomes significant in terms of independent American policy with respect to the post-French period after 1954. My own belief would be that the general tenor and trend of American involvement in that area was in fact public, and publicly perceived all the way through, although you are certainly correct when you say that from an early stage there were covert activities as well.

But I myself share the view that has been expressed by a number of historians and critics, notably Arthur Schlesinger, that whatever mistakes occurred in Southeast Asia—and there were many—it is probably wrong to conclude that the basic trend of American policy was unknown to the American Congress and the American people through that period.

So I would not think in that particular case that covert action was a primary force in creating an unacknowledged or unrecognized involvement.

I do think that can happen. I think that it clearly happened to a degree that I do not think was publicly perceived in the later phases of our engagement in opposition to the Allende election and the Allende regime in Chile. I think there have been other cases—although I would ask to be excused, for lack of accurate recollection, from discussing them—in some of the newly liberated African countries over the last 10 or 15 years.

Whether the present relationship of the United States to the situation in Angola carries implications beyond what we now know is a matter on which I would have to say I am not adequately informed.

Mr. GIAMMO. I wasn't asking you about Angola.

Mr. BUNDY. I understand that.

Mr. GIAMMO. It may be true that at some point our early involvements in Vietnam were more open. What I am talking about is that at some point we began some covert type actions. Specifically, I believe we began some paramilitary type operations in those countries, back in the early beginning. Did that not stake out an American position and is there not the danger that once the administration takes one step

toward establishing a policy, that step has a way of perpetuating itself and snowballing and increasing our efforts in the country?

Mr. BUNDY. As I say, I think certainly taking steps in Vietnam led to other steps—

Mr. GIAIMO. That is what I want to get from you because you were there at the time.

Mr. BUNDY. My point is that was simply not primarily because of covert actions. The American troops, for example, present in Vietnam in increasing numbers through the early 1960's were very visible.

Mr. GIAIMO. But not the paramilitary functions?

Mr. BUNDY. The paramilitary function wasn't all that secret, either, Mr. Chairman.

Mr. GIAIMO. Secret to whom? It was secret to the American people, not to the enemy because they knew they were being hit.

Mr. BUNDY. I don't think you would find the basic course of American involvement in Vietnam was a secret to the American people.

Mr. STANTON. Certainly you would agree that there was a lack of recognition on the part of the American people in that period that we were going to become involved in terms of commitment of troops from the United States?

Mr. BUNDY. I think there was a lack of recognition in the American Government of the degree to which we were going to become involved.

Mr. GIAIMO. Let me ask you another question about those operations. Whether or not they were that secret could be debatable.

Can you tell us at the time these things happened—when these activities and decisions were made—how much of an awareness there was on the part of Congress, and second how much was told to Congress, if anything?

Mr. BUNDY. Which operation are you talking about?

Mr. GIAIMO. My time is up. If you would just answer the questions about our original activities in Vietnam.

Mr. BUNDY. I think again, Mr. Chairman—and I recognize it is a point on which there may be a difference of opinion—the basic information about the degree of involvement was available, but not necessarily the information about future intentions of the President, about which at least one President was extremely and explicitly cautious, namely President Johnson. I think the degree of existing involvement was something that the American people and the Congress could have known.

I am not saying an adequate job of informing the Congress was done on the part of the executive branch, because I don't think that happened.

Mr. GIAIMO. Thank you. We are going to have to recess for a vote on the floor of the House. We will be back in about 15 minutes.

[A brief recess was taken for a vote.]

Mr. GIAIMO. The committee will come to order.

The gentleman from Illinois, Mr. McClory.

Mr. McCLORY. Thank you.

Mr. Fisher, as you are aware, there are other countries—including this country, but particularly the Soviet Union—which have expensive espionage activity. It is estimated that a very high percentage of those attached to the Soviet Embassy are in fact members of the KGB.

You certainly don't object to any covert activities insofar as counterespionage in this country is concerned, do you?

Mr. FISHER. Mr. McClory, I am not taking the position that we cannot keep quiet our gathering of information about their spies. But I would be very unhappy if the CIA continued to do what they have done in the past, namely to hold somebody in this country for 3 years in solitary, because they believe he is an agent, with no judicial procedures. That is also called counterintelligence.

They took a defector who came to this country, locked him up in solitary for 3 years because they thought maybe he was a possible double agent.

I don't think you can leave the door open and say as long as you are doing it for the purpose of counterintelligence, anything goes. Gathering information in this country by means permitted by the Constitution, fine.

Mr. McCLODY. What about counterespionage in other countries, particularly where the other country wants us there and gives us their consent; there is nothing wrong with that, is there?

Mr. FISHER. I have no objection to the gathering of information in a way that is lawful in the country where we are with the consent of the Government.

Mr. McCLODY. Mr. Bundy, we have been trying to determine how the intelligence community operates today and how it has operated in recent years. It seems to me that in those instances where there are covert operations which are authorized by the 40 Committee or were by the 303 Committee, that is activity that is known to the President of the United States and those immediate aides who serve with him.

Now, are you telling this committee today that during your service in the Johnson administration, you were unaware of covert activities that were authorized by the 40 Committee or the 303 Committee?

Mr. BUNDY. No; if they were authorized by the committees I was aware of them, although there is a gray area there.

Mr. McCLODY. Are you aware of some covert activities, then, that were not approved or were not acted upon in some way by the 40 Committee?

Mr. BUNDY. I am now; yes, sir. The whole area which is covered by the Senate committee's report of alleged assassination plotting is an area in which there was never any authorization of any kind from any of those committees.

Mr. McCLODY. With respect to the activities in Cuba, you were aware that there were covert activities that were carried on against the Cubans, were you not?

Mr. BUNDY. Certainly, and so was the country.

Mr. McCLODY. But you knew about all of those activities except the assassination plots?

Mr. BUNDY. I can't say that. You are asking me to demonstrate a negative.

If I can elaborate on that a little bit, I think another thing that happens—

Mr. McCLODY. Well, you justify the overflights for instance.

Mr. BUNDY. Those were definitely authorized.

Mr. McCLODY. It was a covert operation.

Mr. BUNDY. It was authorized.

Mr. McCLORY. And there were covert activities authorized almost on a monthly basis, were there not?

Mr. BUNDY. Yes, I would say sometimes more often than that.

Mr. McCLORY. You knew about those?

Mr. BUNDY. Where I knew about the authorization, certainly I knew about it, but may I elaborate on that point a little.

The committee, when I knew it, operated with only a single staff officer and for reasons which are both understandable and complicating, the description of an operation was not always complete. For example, if you are going to conduct a sabotage operation—and there were many efforts of that kind in the early 1960's—you don't ordinarily tell, and you perhaps should not, exactly the names and numbers of the individuals who may be involved, nor necessarily even the exact landing place, because you have a very great operational interest in protecting, as far as you can, the effectiveness of those people by not having leaks as to what they may be doing.

Now it can happen, and I think it has happened—although I would be at a loss to give you specific examples at this distance in time—that an operation is presented in one way to a committee, and executed in a way that is different from what members of the committee thought they understood. And that is because of the very thin staff process which has surrounded covert operations.

Mr. McCLORY. Do you suggest, then, that those who authorized a covert activity, because it isn't carried out in some precise pattern which wasn't defined, therefore, are not accountable?

Mr. BUNDY. Not at all. I do think that one of the lessons of the operation of that committee, at least in the years in which I knew it, was that it would do its job much better if it were more strongly staffed and if it were supervised by someone not holding the very heavy burden of other activities which normally goes with the chairmanship of that committee. At least it did in the past.

Mr. McCLORY. It is my observation that during the period you were in the Government and William Bundy was in the Government and we had such extensive covert intelligence activity in Vietnam and that general area that we could not assimilate it all or digest it or analyze it or utilize it appropriately.

What do you say about that?

Mr. BUNDY. I would have to say that I think the situation in Vietnam from the middle sixties onward was essentially a war situation and that the supervision of covert activities of a political or quasi-military sort on the ground necessarily devolved out to the theater of operation. That was not something that could have been heavily controlled from the Washington end. It is a quite separate matter, what you do about air operations. Those in the main were, I think, controlled from Washington.

Mr. GLAIMO. The time of the gentleman has expired. We have another vote on the House floor on a rule to oversee citizens' voting rights. Let's recess for 6 or 7 minutes and try to return as quickly as we can.

[A brief recess was taken.]

Mr. GLAIMO. The committee will come to order.

The gentleman from Ohio, Mr. Stanton.

Mr. STANTON. Thank you, Mr. Chairman.

Mr. Bundy, you indicate in your statement that there is justification for covert activities at certain times. Would you say that the criteria for utilization of covert activities ought to be success?

Mr. BUNDY. I think justification has to be wider than just success.

Mr. STANTON. Well, would that be an element of it?

Mr. BUNDY. Certainly.

Mr. STANTON. Could you, from your experience, indicate one successful covert operation which benefited the United States?

Mr. BUNDY. Yes. I put two into my testimony.

Mr. STANTON. Would you identify those?

Mr. BUNDY. Yes.

The U-2 overflights of the Soviet Union in the 1950's and the overflights of Cuba in 1962.

Mr. STANTON. Do you think the U-2 flights over Russia were a success for the United States, in view of the embarrassment it caused this country under the Eisenhower administration?

Mr. BUNDY. I don't think the embarrassment was necessary. It was the way it was handled that produced most of that embarrassment.

Mr. STANTON. You indicate in your statement that you believe in supporting democratic institutions around the world and there may be justification for this country to supply dollars or funds in support of political parties or philosophies. There was quite a bit of that activity when you were at the White House in terms of Western European countries.

Did your personnel or people at the White House or the 40 Committee ever make a judgment as to whether the democratic parties that were receiving funds really represented the interests of the people in terms of representative government?

Mr. BUNDY. I think in relative terms such judgments were made. Let me, if I may—granted my recollection may not be as good as the committee's current information—but my own impression is that the activities you referred to were on a steadily declining scale in the early 1960's.

Mr. STANTON. The indication to me from a review of the record was that it was on an increasing basis during the period of the Kennedy and Johnson administrations.

Mr. BUNDY. In Western Europe?

Mr. STANTON. Yes.

Mr. BUNDY. That is not the way I recollect it, but you may be right.

Mr. STANTON. I don't want to go into the dollars but the fact is that in some countries in Western Europe you were supplying millions of dollars. We now face the question of whether those parties, while they were alleged to be democratic in nature, really represented the interests of the people—when in fact the institutions that we support are not really democratic at all, but merely in name only; and the people who run and conduct our policy in this country failed to examine it from that viewpoint.

Mr. BUNDY. I really am not in a position to tell you, or I don't have the kind of information that would allow me to make judgments retroactively on particular actions that were taken 10 to 15 years ago.

But as I said in my statement, I think that is a hazard—that the kind of assistance you give in a well-intentioned, honest effort to pre-



vent or to limit the danger from right or left wing extremes can be ineffective and undesirable in the result because the assistance that you give tends in fact to support undemocratic forces. That can happen. That is not the whole of the history, in my judgment.

Mr. STANTON. Would you indicate to me or the committee whether you see a justification for this country destabilizing foreign governments for the economic interests of corporations in this country?

Mr. BUNDY. No, I see no justification for that.

Mr. STANTON. But that has occurred in covert activities: hasn't it?

Mr. BUNDY. Not in my time, that I am aware of. In the interests of corporations? No, I have no such recollection.

Mr. STANTON. I am not saying it was in your time, Mr. Bundy.

Mr. BUNDY. No, that is the point I was trying to make.

Mr. STANTON. Do you have any knowledge from the newspapers or any other source?

Mr. BUNDY. Surely. If you are asking me if I read the recent report by a committee in another body yes, I have. I understood you to be asking about the period I was in Government: I am sorry.

Mr. STANTON. There was no influence exerted for corporations through covert activities in foreign countries?

Mr. BUNDY. I don't want to support or subtract from the Senate report because I have no independent knowledge after 1965.

Mr. STANTON. Were there any, say, oil companies involved in the policies or decisions of your administration or the Kennedy-Johnson administration, in terms of economic decisions that you made in the Mideast?

Mr. BUNDY. I don't recall making a single economic decision with respect to the Middle East when I was in Government.

Mr. STANTON. Would you consider supplying weapons to the Mideast an economic decision?

Mr. BUNDY. No. I would think it primarily a political decision.

Mr. STANTON. When it is a covert activity?

Mr. BUNDY. That is a political decision, too.

Mr. GIAIMO. The time of the gentleman has expired.

The gentleman from California.

Mr. DELLUMS. Thank you very much.

Mr. Bundy, a great deal of the justification for our covert activity around the world has been justified in 1950 cold war terms. The question that I would like to pose to you, I would like you to respond to within the framework of the past 10 or 15 years, rather than 1950 post-Second World War responses in terms of justification.

There is an ongoing refrain that we need covert action to help the so-called good guys—the democratic forces. But isn't it a fact that in a large measure the CIA has been active mainly in the third world, not opposing Russia or China, but often opposing general national movements which pose no threat to the United States, and supporting conservative, even reactionary forces, which have no real popular political base and no real commitment to democratic principles?

Mr. BUNDY. I would say there have been some activities which would support that argument, but I think the argument, as you stated it in your question, is much too sweeping.

Mr. DELLUMS. Well, for example, in the past 10 or 15 years most of the covert action that happened in Africa, Latin America, Southeast

Asia, the Caribbean—these are places where black, brown, yellow peoples are. We are not talking about massive covert operations against our so-called two major world powers, namely the Soviet Union and the Chinese. Isn't most of our covert action a "knee-jerk" response to the Soviet Union?

Mr. BUNDY. I think that is too sweeping a statement, Mr. Dellums, as I said.

Mr. DELLUMS. Is that your answer?

Mr. BUNDY. Yes.

Mr. DELLUMS. How do you characterize it?

Mr. BUNDY. I cannot give you, and do not have any qualitative judgment of, the amount of covert activity in one field or another, in one continent or another, in one country or another, over the last 10 years. I have only a general recollection of what it was like before that. I would not be able to support the judgment that the whole thrust or the governing thrust of CIA covert activities was against independent movements in the Third World, because I do not so recollect it.

Mr. DELLUMS. Thank you. I have other questions but I would like to go to Mr. Katzenbach.

Should there be specific criminal penalties for violations of laws by CIA personnel, and second, should all allegations and charges be investigated by the Justice Department?

Mr. KATZENBACH. I think as to the first question, I would see no problem in making some things criminal activities. I would prefer to see a system where the top political officials are responsible for what occurs than I would a criminal system that is likely to pick up the agent somewhere in the field.

But there are certainly some activities which you could forbid, with criminal penalties, no matter who did them. If there is a violation of criminal statutes, then I think the Justice Department is the appropriate one to investigate and prosecute.

Mr. DELLUMS. Thank you.

Mr. Bundy, looking today at the total record of misdeeds and abuses, and realizing the terrible mistrust of the United States throughout the world because of the CIA, on balance, would the United States be severely hurt if all covert action—that is, assassinations, paramilitary operations, overthrow of governments, political and propaganda operations, and assistance to nongovernmental forces—were totally eliminated? Would there be any damage here and what would be the benefits?

I would like Mr. Bundy and Mr. Fisher to respond.

Mr. BUNDY. Let me say, first, that it seems to me what one has to do in this case is not simply to look at abuses and excesses but to look at the whole record, which is not a record of abuses and excesses and failure only. My answer is that the United States would not be severely damaged if there were no covert activities during a period in which, as Mr. Katzenbach suggested, the main focus of attention ought to be on the reconstruction of confidence in American foreign policy as a whole.

Mr. GIAIMO. Will you yield?

Mr. DELLUMS. I yield.

Mr. GIAIMO. When you said there would not be any substantial harm to covert actions, are you excluding satellite overflight?

Mr. BUNDY. Intelligence collection.

Mr. GIAIMO. I think that comes within the definition.

Mr. BUNDY. No. If my answers seemed to carry that impression, I would like to amend it.

Mr. DELLUMS. I defined what I meant by covert activity when I said assassinations, paramilitary operations, et cetera.

Mr. BUNDY. I think that the cases in which you would—if you mean assassinations and paramilitary operations alone. I would say very clearly that in time of peace—which is the time we are in now, although there is conflict in lots of places—we would not be severely damaged if we stopped that sort of thing at this time.

Mr. GIAIMO. Your time has expired, but Mr. Fisher may respond.

Mr. FISHER. I think it would be helpful if we prohibited covert operations like kidnapping, assassinations, and torture and applied the same constitutional restraint on depriving a person of due process of law abroad as well as at home.

Mr. GIAIMO. The gentleman from Colorado.

Mr. JOHNSON. When were you Assistant for National Security Affairs?

Mr. BUNDY. From January 1961 to the end of February 1966.

Mr. JOHNSON. In the parlance of the 40 Committee—I guess then it was the 303 Committee.

Mr. BUNDY. It was first the 5412 Committee and then the 303 Committee.

Mr. JOHNSON. 5412/2 I think.

In your parlance down there, when reference was made to higher authority, what did that mean?

Mr. BUNDY. I think in most cases higher authority in that committee would mean the President.

Mr. JOHNSON. Were there any exceptions to that?

Mr. BUNDY. I don't like to make absolutely sweeping statements because there certainly were cases of particular kinds—usually of military, naval or air reconnaissance—that were of a routine character and that may not have gone to the President. I don't want to say they never went to anyone else, but in the usual case you are certainly right.

Mr. JOHNSON. President Johnson's film clip interview appeared on television the other night—the interview with Walter Cronkite, I believe. The film clip, which had been removed from the public view until just recently, indicated that President Johnson knew of the assassination attempts immediately after he took office.

Mr. BUNDY. I have not seen that clip. I have no independent knowledge that he knew that. In fact—

Mr. JOHNSON. Weren't you responsible for briefing him with respect to CIA activities?

Mr. BUNDY. There is no way I could brief him on something I did not know about, Mr. Johnson. I already testified that I did not know about that.

Mr. JOHNSON. I am trying to reconcile the statements that have previously been made before this committee by officials of the CIA which indicated that any covert operations of significance were authorized by a higher authority.

Mr. BUNDY. Well, I happen to believe that in the case of assassination plotting and assassination attempts—I know that no such

authorization was ever sought through me or through any committee on which I had membership. I was on the membership of that committee, but not always its chairman, for 5 years.

So, if anyone briefed Mr. Johnson on assassination attempts, it was not I. I don't know who it was. I know of no record, explicit or implicit, of anyone saying they ever spoke to the President on that matter—from the CIA or any place else.

Mr. JOHNSON. You read Mr. Baker's views in the Senate report?

Mr. BUNDY. I read his views.

Mr. JOHNSON. But you read the views where he made reference to higher authority?

Mr. BUNDY. His judgment is not that of the committee as a whole, and, as between the two, I prefer the judgment of the committee as a whole.

Mr. JOHNSON. Are you saying that Senator Baker has fabricated it?

Mr. BUNDY. I said there is an obvious difference in the reports and, if you ask me which I support, I would say the committee as a whole.

Mr. JOHNSON. To say there is a higher authority with regard to assassination attempts—who would that be speaking of?

Mr. BUNDY. I can't make that assumption because I know of no such reference.

Mr. JOHNSON. If there were such a reference with respect to higher authority—and we are talking about covert operations, generally speaking—you acknowledged that the normal procedure was that higher authority meant a reference to the President, whoever the President was at that time.

Mr. BUNDY. Right; but I am making it extremely clear that you are trying to make me say I believe a President was briefed on assassination. I do not so believe.

Mr. JOHNSON. I think the record should be quite clear that the references to higher authority have always referred to the President—in this instance, with respect to covert operations. Isn't that true?

Mr. BUNDY. Certainly, in general.

Mr. JOHNSON. Thank you, sir.

I yield back my time.

Mr. GIAIMO. The gentleman from Illinois.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Katzenbach, we have all been reading in the paper what the Senate Select Committee on Intelligence has uncovered regarding the FBI and domestic surveillance. Do you have any recommendations in addition to the one about creating a tough oversight committee, as to how this Congress could hold the FBI in check? I would appreciate your comments as to the role the Attorney General might play in this effort.

It seems to me the Bureau has had an unbridled license in investigating and wiretapping and other activities directed against Dr. Martin Luther King and others. I would like to have you comment on that today.

Mr. KATZENBACH. I think there are a number of things that can be done. I think, certainly, the existing legislation with respect to wiretapping and other means of electronic surveillance can be further tightened up than it is now. I do have some specifics that I would

recommend in that regard. Beyond that, it seems to me, there are procedures that either could be legislatively mandated or could be put in effect, administratively, to give the Attorney General more power, in fact, to review what the Bureau is doing.

I see Mr. Levi set up a committee to do some of that yesterday. For example—and this is a simple proposition—I would say, in any case, any prosecution, the lead attorney from the Department should have access to everything in the Bureau files with respect to that and not depend upon the filter of the Bureau looking through its files and saying: “No, there is no tainted evidence there to worry about.” I think he ought to have full and complete access.

I think that when you are investigating groups—and to my mind that may well be necessary, where groups are in effect criminal conspiracies or where you have reason to believe that they are, and I associate this with violence in my mind—there should be a specific authorization before the beginning of any investigation of that kind of any group that has any political or social or cultural pretensions.

Then, I think you should require a written authorization with the reasons, therefore, to be kept on file. That kind of thing, it seems to me, could help a good deal.

Mr. MURPHY. The Commissioner of the IRS testified before this committee about a month ago. He said it is easy to get the income tax records of the citizens of this country. In terms of States with State income tax laws, local prosecutors are getting them through the back door, through local district attorneys. Local district attorneys hand them out through the local prosecutor.

Do you think we ought to tighten that process up and only under certain circumstances make these returns available?

Mr. KATZENBACH. Yes, I do. I think you make two points. When I was in the Department of Justice I think we had quite strict procedures on access to income tax returns. We had to go through that and it had to have the approval of the head of the tax division who was interested in tax matters.

The second point is one that goes through the whole criminal justice area; that is: What is going to be done by local and State authorities and what kinds of access do they have to similar information. That is much more difficult for the Congress to control than controlling the FBI or controlling other investigative agencies in the Government.

It is not, itself, going to control what local or State police officials may do. I think that is a very difficult problem. I, particularly, think it is a difficult problem if you start encouraging the Narcotics Bureau or the FBI to do indirectly what you have forbidden them from doing directly, or by encouraging local police to do something that Federal law would prohibit them from doing.

Mr. MURPHY. Is that their modus operandi, in other words? Do they use local authorities to give them information which is then given to the FBI or the Justice Department? Do they proceed in an illegal manner in obtaining it?

Mr. KATZENBACH. They have fairly close relationships with most of the major police departments in the country.

Mr. MURPHY. Let's be very frank. Does the FBI, in your experience, have local police officers tap in jurisdictional situations where the FBI

cannot do it and then turn the fruits of that tapping over to the FBI which develops leads from that information?

Mr. KATZENBACH. They never told me that they had done that. I suspected that that was taking place from time to time.

Mr. MURPHY. Do you think the Director of the FBI should have direct access to the President or should he go through the Attorney General?

Mr. KATZENBACH. I think he should go through the Attorney General. But let me say, I think the problem is not so much the direct access problem. I am reluctant to say that the President of the United States can't contact and talk to anybody in the Government that he wants to at any time he wants to.

Mr. BUNDY. He will do it anyway.

Mr. KATZENBACH. I think that is hard to control. I do have very strong feelings, if Mr. Bundy will excuse me, about control of White House staff, because I think the problem may very much be that. Now, that is something that you can control. In the State Department we used to get people running up to me saying, "The White House wants this." I would say, "Who wants it?" It is not the White House that wants it.

Mr. MURPHY. We just recently encountered a situation like that.

Thank you.

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. Thank you very much.

I very much appreciate the testimony of everybody here, especially Mr. Fisher, who talks about some of the things, some of the impressions and recollections, that I share.

Let me ask a question and ask if all three might respond. Basically it seems that there are two kinds of approaches that we might take to control covert actions. All of you, I think, have alluded to one or the other.

One way would be to have Congress pass a list of: "You shall not laws": "You shall not try assassinations. You shall not try covert actions against democratic governments." You would make a list like that and, through the methods Mr. Fisher suggested, try to enforce them.

The other way would be to build in accountability for and enforceability of covert actions. Those are two fundamentally different approaches. I guess both could be tried. I would like each of you to respond as to which way you would like to see it go—or either or both.

Mr. Fisher?

Mr. FISHER. I think you have to have a clear rule of law. I would prefer to start with a rule saying, "No official of any agency of the Government engaged in covert, secret actions in time of peace has any right to break laws because of his position. You are not exempt from any laws, revenue or criminal, by virtue of what you are doing. You must look to a specific act of Congress to authorize the activity you are engaged in."

Instead of coming along and trying to plug the leaks, the rule is that constitutional rights apply to everybody. This is a limited-authority Government. It can act only pursuant to law. When the President exercises his rights overseas, the Congress should say that

it is necessary for the proper execution of those laws that he do it according to law. I would explicitly authorize the kind of intelligence gathering you want with restrictions on extortion, torture, personal violence or whatever you want to limit. I would have clear rules.

Then I think it is absolutely essential that you build into the executive branch—I don't think the Comptroller General can do it—build into the executive branch somebody whose role it is to see that those rules are respected by us and by foreign countries. Give him a role. Provide for access to procedures.

Then the basic thing is to give him power to say, "Don't do that anymore." Now it doesn't have to be definitive. It can be overruled by the President or somebody else. But he should be able to say, "I have heard about these cases. I want you to straighten up and stop doing that. That is my recommendation, that is my determination of what you ought to stop." Then you have a case raised in which the Congress or the President or somebody can deal with it. There seems to be a difference in this office. Do we need a new rule? Should it go to the court or whatever?

You have to have a clear rule permitting no blank checks. You have to have specific authorization of the kind of activities that are done according to law, have some limits on their discretion, and have somebody looking at those dubious cases able to say, "Don't do it again."

Then you get the issues raised. That is the way law works against governments.

In the Lieutenant Calley type cases where somebody has gone so far overboard, you might want to prosecute him. But it has been against the law in this country for 50 years for any State policeman, for any Federal agent, to break and enter in violation of the fourth amendment. It is a misdemeanor. It has been on the books for 50 years. I know of not one single case brought, in spite of the fact that there are thousands of cases litigated on that point. We don't prosecute people for governmental activity. Unless they are torturing or doing something beyond the edge, the basic way to bring law to bear is a cease-and-desist order saying "Stop doing it tomorrow."

This gives the executive plenty of room to operate. They get the first bite anyway. They have secrecy. They are not going to jail for construing the rules. But a course of conduct gets nipped not in the bud but before it gets full blown, and you can bring it back under control.

Mr. ASPIN. Mr. Bundy and Mr. Katzenbach?

Mr. BUNDY. I think there may be some things you can control by positive law of the type Professor Fisher has been discussing, but I would not be disposed to rely on our capacity to write down ahead of time in detail and in an effective way all the kinds of questions that arise in this kind of area.

So I would put much heavier weight on the process of control inside the executive branch and monitoring by the Congress.

Now as to the executive branch, it seems to me the case is very clear. I tried to indicate my feelings about it earlier. There has not been an adequate process of control, primarily because such control as has been vested outside the agency has been vested in understaffed committees,

the committees themselves being manned by people, 98 percent or 99 percent of whose time is properly claimed by other matters.

Therefore, I think it is clear, as I think Ambassador Dungan testified to the Senate last week, that you need additional controls. You need them indeed inside the Agency where I believe that the recent increase—relatively recent increase—in the authority and effectiveness of the Inspector General should be reinforced. I think it is appalling that there should be clear evidence that the Director of the Central Intelligence Agency himself did not know of some of the more important things going on inside his own Agency in the 1960's. So you need reinforced control and monitoring inside the Agency where there has been excessive submission to the notion that you must compartment things for security and things that went on under one name would have been recognized if they had gone on under another.

So you need it in the executive branch.

The congressional part of it is where I am really more diffident, because I don't feel I have the kind of experienced knowledge you are going to need about the way this can be best handled at this end of town.

I do think that one has to say that speaking more broadly than just in the field of intelligence, congressional oversight committees on operational matters are not, based on the historical record, uniformly effective or vigilant.

Mr. ASPIN. That is an understatement.

Mr. BUNBY. I am really not trying to make a joke about it.

Chairman PIKE. You are.

Mr. BUNBY. Although this is the first time I have thought about it, I am rather attracted by Mr. Katzenbach's suggestion that there ought to be a periodic and enforced accounting of all decisions in this field, of their consequences and of the executive branch's current estimate of their effectiveness.

The reason I say that is that I believe if you had that in your mind's eye, as you are sitting in one of these committees—trying to decide whether you are going to put a half million dollars into the support of this or that assertedly very virtuous group—and you ask yourselves, now how will it look to those men and women 3 years from now, that is a good, practical constraint working in the direction that I described in my opening statement; namely, that you should only do things when you are really quite sure how you would explain them to the country and to the Congress if they blow or when they blow.

Mr. ASPIN. My time is up, but I think Mr. Katzenbach wants to respond.

Chairman PIKE. I would like to have Mr. Katzenbach comment.

Mr. KATZENBACH. I essentially agree with some of what Professor Fisher said. In other words, I think both approaches are appropriate. I would not be quite as sweeping. I think, as he would be in what actions are forbidden. Perhaps I don't even understand very well exactly what it is. I agree really with what Mr. Bundy had to say. I would emphasize that knowing a secret—a secret that not many people know, and a secret that you think is going to be kept secret—gives you a real sense of power that I think is a very unhealthy thing.



I think procedures whereby you know that is not going to be kept secret—I would guarantee that better staffing and better review in the executive branch would involve more people and therefore less secrecy and therefore less operations—that is almost unavoidable. I think in these times that would be very healthy.

I do want to agree with Mr. Bundy that I don't think it is an appropriate function for a congressional committee to approve operational matters in advance. I don't think they ought to be involved in it. I don't think it is Congress' bag under the Constitution to do that.

I do think review of this, for the purpose of seeing what is going on, is a perfectly appropriate thing and gives the committee the advantage of hindsight in evaluating something, of looking at it after the fact: "Was it successful? Were the proper procedures taken?" I think that is a far more appropriate congressional function. I think it would be more effective in fact than a congressional committee that reviewed operations simultaneously or in advance.

Chairman PIKE. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Bundy, the proposition of outlawing covert activities entirely bothers me. If the Congress should pass a law banning covert activities, wouldn't this in effect encourage Russia, Cuba, North Korea, and many other adversaries to increase their covert activities?

Mr. BUNDY. I think that to the degree that they believed that this meant, if you want to call it that, a kind of act of unilateral disarmament in a contested area, it might have that effect. When I remarked earlier that I don't think it would do us severe damage to have no such operations for a while I didn't mean to suggest that I would recommend that we legislate a prohibition, because I think that is too blunt a tool. I don't think any of us can say with assurance that there would be no case in the next 1, 3, or 5 years where it would be truly in the national interest to take some specific action.

I don't happen to think that the likelihood is great that there would be severe damage. But I didn't mean to extend that to a recommendation of explicit legislation with a sweeping prohibition.

Mr. MILFORD. Another thing that bothers me a little bit in general is that we seem to be judging the activities of our intelligence community against a standard that is dictated by the U.S. Constitution. I would strongly agree that in any domestic intelligence activities that should take place we should indeed be in conformance with our Constitution.

However, foreign intelligence operations are occurring in an entirely different realm. Our adversaries could care less about the Constitution or Bill of Rights, and international operations are carried on under an entirely different set of rules—in fact, more accurately, on no agreed upon rules at all. In most instances it is also a very nasty and dangerous atmosphere. Wouldn't you consider it to be impractical, and in fact extremely dangerous, for us to mandate that our CIA should operate under American domestic standards while allowing opponents that it has to face in the international arena to play by any dirty rule that they would like?

Mr. BUNDY. I think that it is important not to govern our activity by the standards of opponents. On the other hand, I don't find myself

able to accept—the first time I heard it was this morning—Professor Fisher's view that the domestic law should in fact apply worldwide.

I think that it is not as simple as that and that the activities of the United States in these fields do require, and sometimes justify, actions that would not be legitimate against individual citizens.

Let me take the field of intelligence collection. I do not believe that the U.S. Government has a right to tap telephones. But it does, I think, have a right to try to decipher the codes of foreign governments. It would not be justified in trying to decipher private messages between a Governor of a State or some other political authority.

I really don't believe, myself, that you can make the kind of sweeping assertion that the U.S. domestic code should cover all U.S. foreign activities that I heard my friend putting forth.

Mr. MILFORD. Mr. Fisher, you seem to want to limit the intelligence activities only to periods of wartime. I am wondering if our own history doesn't show that really the proper time for effective intelligence is during peacetime, because in wartime we know who our enemy is. In peacetime we do not.

Mr. FISHER. Mr. Milford, I appreciate the chance to make clear the proposition that I am advancing on information-gathering activities. I would say that on covert operations which we design to affect what happens overseas, I would prefer those be prohibited by any means which would be illegal at home. Maybe we can make a speech. Maybe it is against the law in Spain to make a speech, but I would let the guy make a speech. However, I would say in anything attempted overseas to impose our political view on theirs. I would not have us do things that are both against our laws and their laws.

On the gathering of information, I believe the law should make clear that you are not allowed to do anything except that which this Congress authorizes people to do. If this Congress wishes to authorize people to torture to gather information, I want you to take that responsibility. Unless you make a law, any torture that takes place is as much the fault of the Congress as it is the executive branch. The Congress knows what's going on. We have testimony from agents that they did use torture and we have examples of extortion and other violations of our law. Finally, this is a constitutional government. The constitutionality, the morality, of this society does not stop 3 miles out.

The CIA couldn't take a man and persuade him to go on a cruise and as soon as he gets outside the 3-mile limit start torturing him. If action takes place in Africa or Asia we can say that under the factual circumstances certain things may be permitted. But the Constitution does not stop at the 3-mile limit.

We have *Ried v. Covert* which holds that the United States cannot try a woman in England without a jury trial. In the *Yamashita* case the Supreme Court agonized over whether it was constitutional to hang General Yamashita where Congress, authorized to do so by the Constitution, had made it a crime by act of Congress, where the laws of war authorized a commission to be established and provided for military review, and where the commission had complied with those procedures.

The entire decision would have been irrelevant if we can say that, "Once you get abroad, and as long as it is an alien, do anything you

damn please." I want to be clear that your own standards, what you want your Government doing, do not stop at the 3-mile limit. They apply to aliens as well as citizens. The due process clause protects any "person." The Constitution cannot be avoided by doing something in secret. So you have to say, are there factual circumstances where we want wiretapping to go on because the risks are so great? OK; say so. But don't say that because it is foreign, because it is secret, or because it may involve an alien, you have a blank check, do what you damn well please. That is not a government of laws.

Now I want to say that whatever particular rule you establish about electronic surveillance overseas, then establish that rule, have it a known rule and have somebody in charge of seeing that it is complied with.

I would also argue about what is a good rule or a bad rule. I would say once you step outside the United States the rules do not end. Today an American in Paris can have his entire property taken because the CIA made a mistake and blew up his apartment and he gets no compensation. Is that what you want? Can they arrest anybody anywhere and say they thought he was a spy? Suppose you knew that the CIA had a torture agency set up abroad and ran guys through to extort information. Would you want them to stop that activity? Do you want to say stop that? If you want it done, say so. You have to say what you want and what you don't. This is a government of laws and it is your job to make the laws. Don't try to evade that responsibility by making lawless behavior all right if it is secret or foreign or by saying, "I don't want to know about that."

I am sorry for the sermon. I didn't mean to get that upset.

Chairman PIKE. Mr. Hayes.

Mr. HAYES. Well, Professor Fisher, nobody is going to be upset. I think what you are saying about how you must enjoin activity, unless you want it to go on, is in some respects, I think, being used by the intelligence community in saying "Congress has not forbidden this particular activity." We have had some legal opinions saying that Congress doesn't need to come out and state in the negative in each and every instance that torture abroad is verboten, therefore don't do it—and they will all quit doing it tomorrow. That's the kind of thing I mean.

I think that is the only point where I would differ with what you said. Would you comment on that?

Mr. FISHER. I think you have had 25 years or more of a lot of things being impliedly authorized, arguments about inherent power and arguments about congressional inaction. So I would prefer that the slate be wiped clear, that no one say, "Well, they did it before and Congress never outlawed it, so it must be OK now."

I would like a general prohibition saying, "Because you are CIA doesn't entitle you to anything. You have to have a law authorizing you to do it," and then pass specific laws.

Mr. HAYES. Mr. Katzenbach, I was very interested in your statement earlier that top political officials should be responsible for what occurs. Then a couple of statements later I heard you tell us that you had a suspicion that those FBI agents out there were picking up silver-platter evidence from State guys—possibly procedurally unclear—and yet we have adequate evidence, I think, that there have not been any prosecutions in that area. I think you and I know and everybody

knows that most jacklegged jailhouse lawyers can tell you about how much illegal evidence there is floating around this country today.

In Mr. Bundy's testimony, on page 2, he claims that the CIA and others would stretch various activities to the furthest limits of their authority. He is, of course, still painfully learning about things that happened while he was in Government.

Mr. KATZENBACH. I share that pain.

Mr. HAYES. Let's lacerate ourselves a minute, then, while we are into that. Tell me this: When you suspected that something was going on during the course of carrying out your appointed responsibilities, what was the bar to pursuing those instincts? Was there something about the office, or something about the political situation or circumstances at the time, that would have prevented either one of you from pursuing a course of action that could have led to the exposure of those things to the topmost officials and some examination of that stretching of authority by executive branch bureaucrats?

Mr. KATZENBACH. Well, my recollection is that Mr. Hoover's prestige and Mr. Hoover's control over the Bureau was such that it was a joke and yet not a joke that the Bureau never made a mistake; that the Bureau never did anything wrong. You could inquire about these things and occasionally I did inquire about them. The answer was that it didn't happen. The agent might be sent to Anchorage the same day if he had done something and allowed it to be known.

But as far as the Attorney General was concerned, it did not happen and everything was entirely right.

Mr. HAYES. Were you intimidated by that in a true sense—politically intimidated?

Mr. KATZENBACH. I really didn't know how to go about it. You made an inquiry and you got an answer. I think you were "intimidated" in the sense that you didn't really think you were going to be able to get into it any deeper with Mr. Hoover. You are running the Department of Justice, and if your administration is going to be successful from the country's point of view, you need the help and cooperation of the Bureau. Your programs can go right down the drain if you don't get that.

So, tension between the Attorney General and the head of the FBI is a very bad thing. I think there is no question about the fact that I did, and I suspect everybody else did, treat Mr. Hoover with kid gloves. I think that was wrong. Whether I had an alternative or not, I am not so sure. I think if you weigh the criticism in Congress of Mr. Hoover against the praise, you would find that the praise was quite a bit more than the criticism.

Mr. HAYES. Your openness is welcome.

Mr. MURPHY. Will the gentleman yield at this point?

Mr. HAYES. No.

Mr. BUNDY. Let me say in my reference about things I have learned painfully since that, if I had known about operational assassination efforts in the years in which I was there, it would have been my responsibility to poke into them very hard and engage the President's attention. My point is precisely that I did not know and that I believed—as it turns out erroneously—that covert operations did not happen except when they were effectively presented and authorized through the duly designated committee.

Now, I do think, however, that the other point I make—the tendency to stretch authority—was something which we did become more and more aware of as we went on. We had a very painful instruction on that in the case of the Bay of Pigs, where it turned out at the inquiry into that operation that things that had been stated in one way in the period in which President Kennedy was making up his mind—whether to go or not to go along with the enterprise he found on his doorstep when he came in—that things that were said to him were not the things that actually happened.

I don't think we can say our methods of oversight and monitoring were jacked up as much as they should have been, certainly from what we now know of things we didn't then know about. But I do think it was true that from that period onward, during the years in which I was there, there was a considerably greater effort to understand just what it was that was being proposed and just what would happen.

As I testified earlier, my own recollection is that there was a steady downward trend in the amount of, and the number and importance of, the covert operations that were authorized, with the exception of the particular case of operations against Cuba—which, again, looking back, were not as secret as they may now appear.

One of the best summaries, for example, of covert operations against Cuba in a general informative sense is one that appeared in the New York Times in the spring of 1963 over the byline of Mr. James Reston who is not an unread correspondent.

Mr. HAYES. Mr. Bundy, the general acceleration of that activity against Cuba—and what we now have had reported to us in terms of the literally hundreds of millions of dollars, the secret war at an enormous level—was that unknown to you?

Mr. BUNDY. It was not unknown to me, and it was not unknown to the country. That is the point. Indeed, the pressure at the time, politically, in the Congress, among other places, was for more and not less. Why can't we do something about this Communist regime 90 miles from our borders? Why is the administration so ineffective? Why don't you deal with this threat? That was the level of the political argument at the time.

Chairman PIKE. The time of the gentleman has expired. Did you want to comment?

Mr. FISHER. No.

Chairman PIKE. Mr. Bundy, you state that it is your belief that the initiative in considering covert operations should be held firmly in the hands of political leaders. Isn't that exactly where it was, for example, when the assassinations got authorized in the first place, and isn't that how they got authorized?

Mr. BUNDY. Not in my judgment. That is not the way I read the record and certainly not the way I remember it.

Chairman PIKE. Would you say that that is not—

Mr. BUNDY. Could I elaborate a little?

Chairman PIKE. Let's establish a time frame here. Go ahead.

Mr. BUNDY. I was going to say that I think there is a sense in which there was political pressure—and it is an important point and it should be stated in fairness—political pressure to do something about Cuba and the Castro regime. That is a different thing than executive

initiative in an assassination plot. That is the distinction I was trying to make.

Chairman PIKE. Do you have any knowledge as to subsequent plots? Chile is the one I have in mind at the moment.

Mr. BUNDY. No; nothing except what is in the Senate committee report or what has been in the papers.

Chairman PIKE. I would like to ask each of you gentlemen this question: If we pursue the route which you, respectively, recommend, can you give us an evaluation both of what percentage of the problem is caused by laws that are bad and what percentage of the problem is caused by men who are bad?

Mr. FISHER. I take men as not inherently evil. Most public officials I know in the years I have been around are trying to pursue public ends by means they believe justified under the circumstances. Their errors are those of being caught up in short-term considerations. Their errors are those of looking at the problem through their own eyes, on their own game board, with their own perception—trying to structure a situation where success is measured by having me win the hand and not in keeping the game going, not in keeping the situation orderly. They want to win the point. I don't think we can blame bad men.

Chairman PIKE. In other words, you believe a change in laws will materially change the situation?

Mr. FISHER. I believe that this committee cannot change men.

Chairman PIKE. I know it can't.

Mr. FISHER. This committee can change laws. I think a substantive rule, as I have tried to make clear, should be enacted. Substantive rules should be enacted. But I think the basic way in which democracy succeeds in restraining itself is to have procedural remedies, is to have something happen when there is a problem about the rule; there is somebody whose job it is to raise that question to seek to stop something that may be excessive and have what I call issue control; to force an issue and bring it to attention in an adversary circumstances.

Chairman PIKE. This brings me to my point. There was somebody whose job was head of the FBI. His name was Hoover. We have since found that acts were performed while he was FBI Director that were not legal acts.

Mr. FISHER. The system of checks and balance applies to the Justice Department, as well as to the CIA, as well as to different branches of Government. Within the CIA, you ought to have an inspector general. Outside the CIA, you ought to have a Justice Department office charged with enforcement. Outside the executive branch, you ought to have a regular committee asking for regular reports with oversight. It is the kind of suggestion Mr. Bundy has made about regular reports, what have you done and what is going on. You have to structure in the checks and balances.

We have a rule making it a crime to assassinate the head of any foreign state. This is a crime. There is no procedure for raising that issue other than a criminal prosecution against the President or the Director of the CIA. This is not going to happen.

You want procedures that bring those standards to bear in the future on our Government, case by case.

Chairman PIKE. I would like each of you to answer my question. And I would like to add to you, Mr. Katzenbach, my own view that men, as

opposed to laws, have a tremendous amount to do with the problem. Then, I would like your comments on the question of appointing "political" people to head both the Department of Justice and the Central Intelligence Agency.

Mr. BUNDY. I can be very brief. I think that if you widen the term "law" to include procedures which may not be statutorily mandated, that may be. But the process is very important in these matters. Men are important, too. I do not know how you weigh them in any general way. I think there is a lot of force to the notion that no one person should stay in a sensitive post full of secrets and of real or assumed power for too long. I don't know how long is too long, but in some cases it has certainly been too long.

I also believe that one fundamental objective of due process in law should be to deal with the problem that I think Mr. Katzenbach has correctly identified, which is the danger that if you think you are doing something secret, you may feel inflated by that very process. "Oh, boy, I am playing this private game." It inflates in two ways. It inflates your sense that you know best and it can inflate your sense of the value of what you are doing.

I think most of the time, most of what is planned for covert operations is gravely threatened with the danger that it will be excessive, and that is partly because you seem to think yourself living in a world in which the rules are all different and the forces of politics that operate in the open world are somehow downgraded because this is secret and it is a world of its own.

My own experience is that as you learn about that you should, and I think lots of people do, learn to discount. But you cannot count on that. Especially, you cannot count on it from people whose business it is and whose only business it is.

Chairman PIKE. Mr. Katzenbach.

Mr. KATZENBACH. I have very little to add to what has generally been said by the other two gentlemen here. I agree with them. I would make this point about men who can be guilty of misjudgments; but in both of the situations you are talking about—the FBI or the CIA—you have got to remember that there is an intense pressure to accomplish something where the other side is perceived as playing by very different rules; and that may affect your own adherence to the standards of our society.

I don't know a police force that does not comply with the law upon occasion. The more they feel the evil of the other side, the more violence that is attached to it, the more they see a witness shot down, the more emotion that you get—and I am sure the same thing has been true of the CIA in playing their games.

They are much more than games. Talk about torturing somebody; the emotional impact of one of their informants being tortured is a factor that again requires review by people less involved in that, if standards are to be kept. But it is a factor, and it is a factor I think in misjudgment.

My own view of Mr. Hoover is that he served too long. The world was passing him by and he didn't like the world as he saw it. Most of the stuff that has come out has been things that came out really almost after he was 70 years old. I think you would find very little of that activity—some, but very little, of that activity—if you go

back further into an age where I think he saw the world more as other people saw the world, and I think he just didn't appreciate the change.

With respect to political officials, I think you have as much danger in terms of moving a professional up through the system to run an agency as you do with a political official.

Now, you can use "political" in so many different senses. I think it probably is a bad practice to have the Attorney General be a former campaign manager, and that has been done many times in many administrations. I think that is a bad practice.

I think as far as the Central Intelligence Agency is concerned, it probably is essential that you have a professional running that Agency; but when a person becomes head of it, he should be politically responsible, and he should be a person who has a sense of our political system and not all bureaucrats get that. They have somebody else to front for them most of their careers—down here on the Hill with the public, with the press.

So I think it is a difficulty. I think terms of office are important, but I would think a President would be unwise to nominate people with clearly political backgrounds for those particular responsibilities.

I would make one other point. It may seem a minor one, but to me it was always an important one, and that is why you do not get rid of political appointments of U.S. attorneys.

Chairman PIKE. I think that all of you have thrown the ball into our court properly, and I apologize again for not having been able to be here for the entire hearing. I had read all of your statements. They are superb statements and very useful to us as we grapple with perhaps ungrappable legislation. We are going to try. And I thank you all for coming.

The committee will stand in recess until 2 o'clock this afternoon.

[Whereupon, at 12:34 p.m., the committee recessed until 2 p.m. in the afternoon. The afternoon proceedings, "Legal Issues—Domestic Intelligence," are printed in part 3 of these hearings.]



# CONGRESSIONAL OVERSIGHT OF INTELLIGENCE

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THURSDAY, DECEMBER 11, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:10 a.m., in room 2212, Rayburn House Office Building, the Honorable Otis G. Pike [chairman], presiding.

Present: Representatives Pike, Giaimo, Dellums, Murphy, Aspin, Milford, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Jeffrey R. Whieldon, counsel; and Jacqueline Hess, investigator.

Chairman PIKE. The committee will come to order.

We deal today with one of the more controversial, more difficult, and trickier issues involved in the whole concept of accountability, and that is congressional oversight over the operations of the intelligence agencies.

Our first witness today is a gentleman who, for better or for worse, has probably had more experience on this particular issue than any other Member of the House, at least insofar as the question of secrecy is concerned.

We are delighted to have you here, Mr. Harrington. Please proceed with your statement on the issue.

## STATEMENT OF HON. MICHAEL J. HARRINGTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. HARRINGTON. Thank you, Mr. Chairman.

I don't know that I would really even want to attempt to qualify your opening. I think it is perhaps as apt a description as I could give myself after 15 months. I appreciate the chance to come before the committee. I have a prepared statement.

Chairman PIKE. Mr. Harrington, your normally softspoken style is not carrying back to the press table. I know that they, too, are interested.

Mr. HARRINGTON. Let me raise my voice, then, and make the statement that I have prepared. I think that the staff has received a rather belated edition for the members of the committee.

Mr. Chairman, I want to thank the committee, as I have indicated, for this opportunity to testify on the role of the Congress in the intelligence area, even though I may be less a witness here than an object lesson. The fact that I appear before you, not among you, this

morning may say more about the subject at hand than anything I might offer in the next hour of discussion. I trust you didn't invite me here to serve as a warning to the wayward; but I think the example of my recent troubles might serve well as a point of departure for some general observations on the problems we face as a Congress in challenging the national security mystique. To me, the example suggests that our major obstacle in this area is ourselves.

None of you will object, I'm sure, if I spare you a full recitation of my record of interest in Chile, my efforts to get official information on CIA involvement there, my transmittal of that information to other Members in hopes of stimulating an inquiry, and my tribulations as a result of all this leaking to the press. That story is fairly well known, and its comic-opera details are far less important to observe than the attitudes and institutional reflexes that brought it into being. I therefore direct your attention to the very end of the story—to the final twist of fate that got me off the hook—because I think it perfectly exemplifies the problem we confront.

Just as it was about to begin formal disciplinary hearings last month, the House Ethics Committee met in secret session and dismissed the entire proceeding on what was generally billed as a "technicality." According to the committee, it was discovered that the Colby testimony on Chile in April of 1974 had not been taken in executive session after all, and the charge that I mishandled executive session material was therefore without foundation. No prior notice of Mr. Colby's appearance had been given to Intelligence Subcommittee members, no vote had been taken to go into executive session, and no one but the chairman had been present for the interview.

The Ethics Committee's finding, in other words, actually illustrated what a sham congressional oversight of the CIA had been under the auspices of the Armed Services Committee. And the fact that this could be written off as a technicality as late as November 1975 illustrates how far we still have to go in raising public and congressional awareness of the nature of our responsibilities. I might add that not one of the Members who dogged me with sermons on the sanctity of the rules during that period has so far stepped forward to suggest that a chairman who violated his own obligations in this manner might himself be subject to challenge or complaint.

Do you want me to proceed, or do you want this quorum call out of the way first, Mr. Chairman?

Chairman PIKE. If you are not eager to answer the quorum call, it has been the practice of our committee, and the belief of most of the members of the committee, that what we are doing is a little more important than going over there punching the "Present" button, and returning. So please proceed, Mr. Harrington.

Mr. HARRINGTON. Thank you, Mr. Chairman.

Chairman PIKE. As long as Mr. McClory will stay, we will have a legal hearing.

Mr. HARRINGTON. I had some trouble rationalizing that view 6 years ago in coming to the Congress, but I am glad to see someone else shares it, and I will proceed. I appreciate it.

With such attitudes still so widely shared, I'm not sure how much sense it makes for us to sit here and debate the fine points of structural

change and legislative reform. For example, throughout my time of troubles I repeatedly insisted that Congress must decide what a Member should do when he discovers evidence of high-level crimes or improprieties in classified material. I still think we have to solve that problem, and the formulation of appropriate new procedures is not beyond the combined talents of the Rules Committee and the House Parliamentarian. But procedures alone won't make us stand up to executive lawlessness. It really comes down to a question of stomach, and we can't legislate that.

In matters of national security, to put it plainly, Congress has allowed itself to be intimidated. For 30 years Presidents have told the American people that only the executive branch has the information, competence, and discipline to conduct foreign policy, and by and large, Congress has acquiesced in that judgment. Not wanting to be vulnerable to the charge at election time that we have trifled with the national security, we have erred on the side of safety, contributing by simple avoidance to the slow but steady growth of a garrison-state executive, an edifice of deception, lawlessness, and unaccountability.

A prime example of executive intimidation was Secretary Kissinger's speech in Detroit 2 weeks ago in which he called for an end to the "self-flagellation that has done so much harm to this Nation's capacity to conduct foreign policy." Just in case the point was missed, the Secretary went on to characterize the clandestine activities of the CIA in terms which, a decade ago, would probably have received near-unanimous acclaim from those who aspired to be elected to public office—"We must keep in mind that in a world where totalitarian governments can manipulate friendly political parties, there is a gray area between foreign policy and overt intervention which we deny ourselves at grave risk to our national security."

Now who among us wants to be accused of "self-flagellation" or of posing "grave risk to our national security"? In the American political lexicon those are scare phrases of the highest order—plain intimidation.

A prime example of congressional acquiescence, on the other hand—and here I speak with special regret—was this committee's most recent response to the stonewalling obstructionism of the man who uttered those words. The tough stand you appeared to be taking in demanding documentation from this so-called open administration had my unqualified support. The contempt citations you voted against the Secretary of State were an important and necessary step in restoring congressional coequality. Although I fully understand the political realities that led to the final arrangement, I was deeply disappointed that once again we saw a caving-in to Executive high-handedness—to the arrogant presumption of superior insight at their end of Pennsylvania Avenue and the disdainful assumption of irresponsibility at this end.

In this connection, allow me to make a proposal. In my judgment, the announced determination of this committee, along with its Senate counterpart, to complete its work within another month or so has greatly weakened your position with the administration, for it permits a defense based simply on delay. Your successor oversight committee—no matter how well-structured, no matter how competent or well-

intentioned—cannot possibly retain the momentum of this special investigation. In view of the obstacles you have encountered here under the very best of conditions, you can hardly expect that successor committee to complete your work after the reporters and cameras are gone. There are a great many areas that have had little or no public treatment by either of the select committees.

The area of Defense Department intelligence activity, for example, needs to be investigated far more thoroughly—we have learned very little publicly regarding the allegations of abuses and incompetence in the DIA, the NSA, and the service intelligence agencies. After 2 years of intense international speculation about the CIA's role in the Chilean coup, the Senate committee held only 1 afternoon of public hearings on the subject, without a single witness from the CIA. Senator Church, in my opinion, should have issued subpoenas to the officials involved and followed the initial example of this committee if the officials had failed to comply.

In short, the select committees should serve notice that they are prepared to outlast the administration—that they will not go out of business until their work has been completed to the satisfaction of Congress and the public. I strongly urge you today to extend the life of this committee through the next session of Congress, providing yourselves the time and the resources to complete the job. The oversight committee that takes over after you should be secure in the knowledge that the intelligence abuses of the past have been thoroughly explored and their lessons absorbed by the Nation.

Let me move, finally, to some lessons which I have drawn from what we have seen revealed in recent months. Effective congressional oversight, if it can be achieved, will not by itself assure a law-abiding, well-managed intelligence community in the future. Certain additional steps will have to be taken.

First, if we really believe in democracy and self-determination as a model for the world, covert action must be abolished as an instrument of U.S. foreign policy. The existence of a standing covert action capability in the CIA, available to a series of Presidents anxious for quick results, has had disastrous long-term consequences, severely crippling this country as a leader in the world and badly shaking the faith of our own people in the integrity of their system. "Secret wars" fought without the knowledge or approval of the Congress, secret deals with foreign governments and political elements, the use of methods such as assassination and bribery—all have combined to make us look rather similar in the eyes of the world to societies we routinely condemn.

The effort by the Congress to control covert action, embodied in an amendment to the Foreign Assistance Act of 1974, has failed and ought to be supplanted by an outright prohibition. It has merely resulted in Congress being implicated in programs such as those under way in Portugal and Angola, without any real power on the part of this branch to veto or even influence the actions undertaken by the executive. Language must be found which will prohibit clandestine manipulation of foreign societies, and Congress must be emphatic in its enforcement.

Second, we must build in reliable safeguards against illegal activity by intelligence agencies, setting up mechanisms for the investigation

and prosecution of those who abuse their public trust. To this end we should establish:

A. A special prosecutor for the intelligence community, confirmed by the Senate for a fixed term, with jurisdiction over illegal activities by any of the intelligence agencies of the Federal Government. The Justice Department performance in the *Watergate* case, and its failure to take action on any of the illegal intelligence activities which have been reported to it, including the allegations of perjury brought against Richard Helms, lead me to conclude that jurisdiction over these matters should be transferred to an independent prosecutor who can be held accountable to the Congress.

B. An inspector general for the entire intelligence community, appointed from outside that community and confirmed by the Senate for a fixed term, with responsibility to report any possible violations to the special prosecutor for intelligence.

This function should be performed from an independent position to prevent the kind of negligence that became apparent following the Schlesinger review of questionable CIA activities.

C. A legal counsel for each of the intelligence agencies, appointed from outside the intelligence community, confirmed by the Senate for a fixed term, and accountable to the Congress for the independence and integrity of their legal advice to the agencies. This would insure that the agencies' lawyers would act to keep them within the law, rather than help them avoid it, as has often been the case in the past.

Third, after several decades of almost unrestrained proliferation of Executive secrecy, the classification system is in desperate need of revamping. Since access to information is essential both to congressional oversight of executive activity and to intelligent public debate, curbing the power to classify must be a basic part of our effort. There is currently no independent control over the large number of Federal agencies which wield the secrecy stamp, nor is there an independent body to which classification abuses can be appealed. Indeed the only body I have been able to discover which is charged with declassification is an office in the National Archives. In light of this obvious need for reform:

A. An independent classification appeals board should be established, consisting of congressional, executive, and public members, to monitor the use of classification by executive agencies.

B. Congress should have uninhibited access to all finished intelligence. The Congress established the CIA and it is entitled to the agency's findings.

C. The "third agency rule" should be abolished, at least as it affects Congress. It is outrageous that such a regulation should be used by the Executive as grounds to deny Congress classified material.

D. Congress should initiate a root-and-branch review of the classification system, taking its cue from the excellent effort of the Moorhead panel and establishing something in the nature of a national joint commission. The commission should not only document the abuses and difficulties which characterize the present system, but should thoroughly outline sane new standards of classification and disclosure, explaining in the process how minimizing secrecy actually enhances the national security in a democratic society.

In closing, let me emphasize that none of these specific steps can serve their intended purpose unless we seriously challenge, through forums such as this, the assumptions that have buttressed our defense and foreign policy perceptions over the past 30 years. The cold-war vision of this Nation as the guardian and ruler of a free world ringed with peril is the root of most of the abuses and inanities your investigation has uncovered. With the sobering experiences of Vietnam and Watergate behind us, this crude and infantile perception should be ripe for radical revision. Until we regain a capacity for sensing global nuance and recognize our own moral and physical limitations as a Nation, we will probably continue to hand over our rights as a Congress and a people to the national security bureaucracy.

Chairman PIKE. Thank you very much, Mr. Harrington.

As always, you are most articulate in presenting your case.

I would like to start by saying that I wholeheartedly agree with those aspects of your testimony which deal with secrecy in general, the classification system in particular, and the right of Congress to have access to intelligence information.

I frankly believed—and I am sorry Mr. McClory just stepped out of the room—that, through the agreement between the President and Mr. McClory and me, we had nearly solved the problem of access, and I was rudely awakened to find that we had not.

The question of the revelation of information to which we have access is a different problem.

While I agree with you that courage is probably the most important ingredient in congressional oversight, I think we come to a parting of the ways when we get to the basic problem of whether every man having access to intelligence should use his own conscience to determine what is revealed or whether he should be bound by particular rules.

We in this committee did work out a set of rules which I agreed to be bound by, even though we have knowledge of things which I believe should be within the public domain.

One of the problems we have to address ourselves to is whether we should change the rules of the House, so that not all Members of Congress will have access to everything within all of the committees or subcommittees of the House, and I would like you to address yourself first to that question.

Mr. HARRINGTON. If I could, Mr. Chairman, let me go back and address an earlier one, because I would not want my silence—

Chairman PIKE. Absolutely, I don't mean to cut you off in any manner.

Mr. HARRINGTON [continuing]. To imply acquiescence in the statement of the thesis. I did not think that I said that what I was seeking was an effort to provide total individual determination—

Chairman PIKE. You didn't.

Mr. HARRINGTON [continuing]. Of when information was to be released. I can, in the broad sense, because it is more readily or more easily arrived at, accept at least in theory a need for some curtailment of it. And I have been bothered, I suppose, by what one does, assuming that there can be an effort made to provide something more satisfactory than what we presently have, if that in fact still does not function according to the individual judgment involved, and what the responsibilities might be that devolve from there. That perhaps is where I come

back to the thesis we both share—that maybe it is ultimately going to be determined subjectively, for good or for bad.

I would like, though, to provide something more than the generally agreed upon conclusion that there is an inherent conflict between existing committee rules and general rules which appear to give access to Members of the House to all records of each committee, including the select committee.

I don't know that there is any specially agreed upon route that one might take to resolve that. One of the things that I think is useful—since I have suggested it for the Executive, and that would be at least appropriate to consider—would be attempting to build in an institutional need for response at perhaps ascending levels, so that if one were not satisfied at a given congressional committee level, one would have the recourse, within the institution itself, of attempting to broaden the sought-after approval to include other committees or parts of or aspects of the leadership. Enforce on them the requirement to make decisions or determinations in that area. But I don't know that ultimately we are not reduced to simply hoping in the long run that each individual will behave with appropriate restraint.

One of the best ways that I think that might be done, that I think we both agree on, is to sharply reduce the classification of information which does not in the remotest fashion affect national security, and give some substance to the use of that phrase in a way that has not been the case for a long period of time, both in domestic and foreign settings. Beyond that, I don't have any insight that I can offer you at this time.

Chairman PIKE. I share with you the belief that we in this Nation will find greater strength through honesty than we will find through secrecy. It is a problem which troubles me greatly, and it is one which we have to grasp, or at least address ourselves to, in writing our report and our recommendations, and I frankly don't know whether this committee will ever be able to agree on an answer to this very difficult problem.

Mr. HARRINGTON. Let me return to another theme, because it perhaps is impolitic.

Chairman PIKE. I have a feeling that I have perhaps used up my time but nobody has told me so yet. Please go ahead.

Mr. DELLUMS. By unanimous consent, proceed.

Chairman PIKE. Thank you, Mr. Dellums.

Mr. HARRINGTON. I don't think any printed report will ever make up for the chance that has been missed by this committee, and by its Senate counterpart, to educate the American public much more forcefully than has been the case over the course of this period. I do appreciate the truncated nature of this committee's existence and the inherent limitations of time that have been imposed; but I don't think hearings in executive session and a report, as fine as it may be and as specific as it may be, will suffice as a civics lesson in this area for the public. I think the efforts made have impeded our ability to deal with the Executive in getting information, and have also allowed the risk of continuing on a course which we have seen incrementally advanced over the last 30 years. I would again urge you, on that basis, to develop some public consensus by an extension or continuation of this process as openly as possible, and to do the kind of a job that does beyond

saying we are satisfied among ourselves. Until you can get broad public perception of that, you will not really have met the kind of test that I think this institution has to meet, if it is going to be effective.

Chairman PIKE. Mr. McClory?

Mr. McCLORY. Mr. Harrington, you have really been responsible for raising the whole question of whether or not any confidentiality should be entrusted to the Members of the Congress, and whether or not the Congress can be trusted with confidential information regardless of the proceedings and the outcome of the proceedings.

Do you feel that secret information in the possession of the Executive should be shared with the Congress under any circumstances, or under any direction or compulsion insofar as retaining that secrecy or confidentiality?

Mr. HARRINGTON. If I understand your question, it may be in two parts. One, should there be a sharing of whatever the executive branch may develop by way of information that by its nature is determined to be secret and second—

Mr. McCLORY. We will probably make that kind of a recommendation—that the intelligence agencies must share even the most secret information with some group in the Congress. But is there a responsibility then to retain that confidentiality or should we have the privilege of deciding for ourselves whether we want to do it? And should every Member of Congress be able to make that kind of an independent decision himself or herself?

Mr. HARRINGTON. I think that there should be in the broader sense, Mr. McClory, a responsibility for retaining and preserving the confidential nature of information that is received from the Executive. I do think that in terms of the course that you were on, dealing with the October estimates, a coequal branch of Government can, on its own, by a vote of its membership, conclude what it will disclose to the American public. That ought to be among the basic things you fight for as a result of what you are doing.

I would like to try to develop rules, as I have indicated in my exchange with Mr. Pike, which in dealing with the individual aspect of that, would at least be more rational than the ones we have. I don't know that we aren't reduced to what that last exchange indicated—basically I think we would hope that we could avoid it, both with an appropriately narrowed usage of national security and with an appreciation for the need to act responsibly. But ultimately I think you are going to come down to individual conscience, and I would hope that we could make that, not the operative ethic, but only the rare exception.

Mr. McCLORY. Do you think this sharing of confidential information should not include all of the Members of Congress?

Mr. HARRINGTON. No, I don't.

Mr. McCLORY. You wouldn't disagree, would you, with this proposition—which is the one that this committee adopted: That where, after receiving confidential information, we choose to declassify it, or consider declassification, we submit the ultimate decision, where there is disagreement between the Executive and the Congress, to the courts?

Mr. HARRINGTON. I didn't know that that was what your resolution was.



Mr. McCLORY. Yes. We said that if the President, for instance, decides that the national security is involved, and vetoes, in a sense, our release of classified information, the issue would then go to the courts.

Mr. HARRINGTON. My impression—and I am glad to hear this extension of that belief of mine—was that you had handed back to the President the ultimate right to determine whether or not information would be released. I didn't realize we had enlarged on that doctrine.

Mr. McCLORY. No; what about submitting it for judicial determination?

Mr. HARRINGTON. I would have no problem if it appears to respect the integrity of each branch. I think that Senator Muskie, for instance, has a bill which has suggested that as a device for dealing with this.

Mr. McCLORY. You have stated you are against all covert operations. Certain covert operations would involve the utilization of sophisticated equipment which could secretly detect a lot of things in the possession of the enemy—arms or something like that. Also, of course, there are the secret or clandestine activities which are involved in counterespionage activities, either here or abroad.

Are you opposed to those kinds of covert actions?

Mr. HARRINGTON. Let me try to escape the—

Mr. McCLORY. Or are you just trying to say that you are against assassination plots, which I guess all of us are against?

Mr. HARRINGTON. Let me try to escape the semantic box I may have built for myself by answering that in another fashion. We passed an amendment last year—I think rather thoughtlessly—called the Ryan amendment, which required the Executive to submit to the Congress in timely fashion, with an appropriate justification in terms of national security, a list of activities that have been described as covert operations. I have read what passes for compliance with that at the International Relations Committee level.

There has obviously been no problem, in my view, with either compliance on the part of the Executive, or in acquiescence by the legislative branch in arriving at a definition of covert action—which does not go in the direction you were suggesting, but which goes to direct involvement in the political activities or affairs of another country.

I think we could probably spend days attempting to look at the nuances and subtleties of what the definition may be of covert action, when you get into where you draw that line.

The concern I have runs to that heavy involvement, not in intelligence gathering and evaluation, but to bring about political change in a given environment by whatever the means chosen—economic, political, military in some instances. It is that kind of activity that I basically am attempting to say here that this country should not be engaging in.

Mr. McCLORY. Thank you very much. I think my time is up, Mr. Chairman.

Chairman PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you very much, Mr. Chairman.

First, I would like to say to my distinguished colleague from Massachusetts that again I applaud your efforts at bringing about truth in terms of America's involvement in Chile and raising what I think

are very extraordinary and principled questions with respect to the responsibility of Congress.

Second, I would like to go to page 3 of your testimony where you said: "Although I fully understand the political realities that led to the final arrangement, I was deeply disappointed that once again we saw a caving-in to Executive highhandedness."

I would just like to make a comment on that, because I think that that statement is in error. We took a very difficult stand, and I offered the motions to bring the Secretary into contempt, and I would like to say this with my distinguished colleague from Wisconsin present as well as the press. With all due respect to Mr. Aspin and all due respect to the press, I think the way they reported the issue of compliance with the subpoena was horrible.

No. 1, Mr. Aspin does not speak for me, and did not work any deal out with this committee. And No. 2, it was not a deal. The subpoena was fully complied with. We went to the White House and got the documents—probably the first time in the history of this country that the Congress of the United States got some information it wanted.

What I would like to have seen reported by the press was that this committee, perhaps not with an extraordinary amount of support in the full House, won a major victory, and we proved that it could work if you stand up to the arrogance of the executive branch and are willing to go all the way to the mat, even where they categorize it as a kamikaze mission. If you believe the principle is right you can win. We took that position and we beat them, so I personally resent the characterization in the press of a deal led by the distinguished gentleman from Wisconsin, which is totally inappropriate, a distortion, a perversion of the reality of the situation. That is not saying anything against him; that is just how people report it.

No. 2, the press has been with us when we have taken a stand. Everybody ran out of the room when we passed a contempt citation, because that was news and sells papers; but they didn't go out and say that this tiny little committee beat the executive branch on that issue, because we got the material from the State Department documents, so it was not a cave in. I would say to you, Mike, that it was a victory on the part of this committee.

Now, the executive branch doesn't want us to say that it was a victory, because then it would make it appear as if they caved in; so we are in this never-never land of a funny kind of charade, where the executive branch said, "We didn't cave in" and the House said, "We didn't cave in," but somebody won on that issue and we beat them on that particular issue.

I would have liked to have seen us take a contempt citation to the floor of Congress if there was no compliance; but there was compliance, so we are not out here trying to be buffoons. I have many questions about Mr. Kissinger's function and activity and power in this country, but if we are talking about a subpoena, if they complied, then I think that that resolves the question. So I just would like to make that point very clearly. No press made the statement that we actually won on the question.

I was there, and I defy anyone to question my integrity with respect to that issue. We got the information. The tragic reality of the

whole thing was when it was all over, nobody, including the distinguished gentleman from Illinois, Mr. McClory, could figure out why they didn't comply in the first place. They always said in effect:

We don't want to comply because Members of Congress will have access or be privy to information from the Secretary of State directly to the President of the United States, recommendations which are privileged communications.

Out of the 19 matters that were brought up in the subpoena, three of them were recommendations directed to the President; so after the meeting in the White House, I said to the State Department person: "It would seem to me that a prudent course would have been to give us 16. We could have fought over 3." But they backed off and said, "We are not going to give you anything." We beat them on that question. We won on that issue. I don't care what they say—what kind of public relations game they run from 1600 Pennsylvania Avenue or from the State Department—we got the information we wanted, and that is what I think is very important.

Whether the House itself was about to cave in, with the fear of the superimage of Secretary Kissinger is a whole other question, and you and I understand the reality of that; but in terms of the responsibilities of this committee, we won.

Mr. McCLORY. Would the gentleman yield?

Mr. DELLUMS. I yield.

Chairman PIKE. The time of the gentleman has expired.

Mr. DELLUMS. I was only getting started.

Chairman PIKE. As it works out, the Chair now recognizes the gentleman from Wisconsin, Mr. Aspin.

Mr. Harrington, would you care to address yourself to this?

Mr. HARRINGTON. Very briefly, first to publicly thank Mr. Dellums for the much appreciated support, encouragement and risk undertaken at the point in time this summer when it was most appreciated. I don't know that we would come to the same general conclusion about the final description of the result attained at the White House this week, but my description was not meant to detract in any way from what I have always admired in the perception you have brought to the committee.

I don't want to interfere with the equal time offered Mr. Aspin by the chairman, but I would again like to get into what I stressed to the chairman. I think you have made your own problems by the reaffirmation of ending the existence of this committee at a fixed point in time, and made it very easy for a pattern that has been developed with some sophistication over the last few years to be applied to you as it has to most other parts of the Congress.

Excuse me, Mr. Aspin.

Chairman PIKE. Mr. Aspin.

Mr. McCLORY. Will Mr. Aspin yield to me for 30 seconds?

Mr. ASPIN. I yield for 30 seconds.

Mr. McCLORY. I want to commend the gentleman from Wisconsin for his work, in which I cooperated; and I also want to concur with what the gentleman from California said. We won. We got the information. I don't want to concur in all the other things he said, but we achieved results. We got the information. They came through. Why they didn't come through earlier I don't know either, but this committee did succeed, and I think we should be complimented for that.

Mr. ASPIN. Thank you.

I guess I had better say something about what the gentleman from California said. I think that what he is saying is correct in the sense that we did get more information than we otherwise thought we were going to get, and I think the chairman deserves a lot of credit for that. I think that the characterization that I would put on the outcome was the characterization that the chairman put on it—namely, that it was a compromise.

We got the information. They did not show us the documents themselves, and so everybody's principles remained intact. Their main concern was that we not violate the point of executive privilege, and in order not to violate that, they did not actually want to show us the documents. We weren't as concerned with actually seeing the documents as we were with getting the information, so we got the information. We got more information than we thought we were going to get. We got more information than I thought we were going to get a few days before, and I think it is an amicable solution all around.

It is true that when we go into these things, it turns out that the fights are always on something that turns out to be of less than monumental importance. It was true about the Boyatt memorandum. It was certainly true about the issues involved here. The information, the substance of the issue, is almost trivial; but these things get escalated to a point of principle and saving face on all sides. I am absolutely convinced that some day, when this system of Government—of checks, and balances, and tension between executive and legislative—some day when that whole thing finally self-destructs and blows up, it is going to be over some little issue that doesn't matter worth a hill of beans. It will be because everybody has gotten themselves entrenched in a position where they can't back off because they are establishing principles for the future or their face is involved, et cetera. Whatever, I am glad the issue has been settled.

I am glad it has been settled in a way in which the gentleman from California is happy as well as the gentleman from Illinois, Mr. McClory. I think if we can settle it in that kind of way, and settle it in a way in which the State Department and the White House are happy, we have done a good thing.

Let me go to the substance of your testimony, Mike. I share your views when you talk about some of the problems that a congressional oversight committee is going to have over this, even with the best will in the world and the best intentions. But do you have any thoughts about how Congress should structure itself in a way to monitor this thing?

What is your thinking in those terms?

Mr. HARRINGTON. Looking at where it has gone, I would almost conclude that we would be better off offering no legislation, to offer them uncertainty instead, and to hope for a process of education, which I think has only begun, leading to a broader appreciation of the inherent foreign policy implications in the narrow issues you have been dealing with. Considering the expressed views of the President, and the expressed indecisiveness of the Congress dealing with as insignificant a matter as the CIA budget in its gross form, I doubt that we are likely to do anything more than perpetuate the illusion of something positive occurring.

I think the worst thing you could do would be to offer up to the country and to the Congress something that is described as a major improvement, when in fact the attitudes that I can sense here and in the executive branch would preclude that new arrangement from being anything more than a sham.

I think what you have to do, if I could finish and let you go back, is to do what apparently is not going to be done: Continue this effort to educate the public and the Congress on what has happened in this country for the last 30 years, countenanced by the misuse of terms like "national security." If you made a contribution, I would think it would be by making no recommendations but continuing the educative process you have begun.

Chairman PIKE. The time of the gentleman has expired.

Mr. Kasten.

Mr. KASTEN. Mr. Chairman, I would be happy to yield 2 minutes to the gentleman from Wisconsin.

Mr. ASPIN. Thank you.

Just to follow up what you are suggesting, you are suggesting that we continue the life of this committee? And that we do not at this point make any recommendations?

Mr. HARRINGTON. Correct.

Mr. ASPIN. But, presumably the life of this committee would expire sometime before the end of the 94th Congress; is that correct?

Mr. HARRINGTON. Correct.

Mr. ASPIN. At that point do you think we ought to make recommendations?

Mr. HARRINGTON. You may be in a substantially better position at that point to offer something which is relevant and not illusory.

Mr. ASPIN. Thank you for the time.

Mr. KASTEN. Mr. Chairman, I have no questions. I would like to yield the additional time that I have to Mr. Johnson.

Chairman PIKE. Without objection, Mr. Johnson will be recognized for the extra time when his turn comes.

Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman.

Mr. Harrington, while I have warm personal feelings for the gentleman from Massachusetts, and I hope that I am indeed his friend, I strongly disagree with your past actions. You, like I and every Member of this Congress, have a limited staff of 18 people or less, and our routine office work demands use of nearly every one of these staff people. I simply contend that individual Members of Congress do not have facilities to fully examine the complex matters that are involved in unilaterally releasing national secrets.

Furthermore, some of these cause serious damage to the country itself, and to do this without first at least going to a leadership group, or going to another group, I think is a bad situation. Again, as I said, this has nothing to do with our personal relationship. It's strictly a stance.

I would like to ask a couple of questions: If, as you indicate, every Member of Congress should have total access to all classified information and all committee files, what would keep a Member from, again, unilaterally releasing any document strictly on his own volition, by

simply taking that information, walking to the floor, and reading it into a speech?

Mr. HARRINGTON. Let me reverse the order, perhaps, to answer the more specific question at the end. I think the process of unilateral release of information has been so thoroughly institutionalized by the executive branch that there is really little that we could do that would even come close to it. That is not meant to avoid the question, but to suggest that the cynical use of leaks, the acceptance of them as part of the art form practiced by the executive, has been acquiesced in completely by the Congress for years. I don't know that we have ever seen the question raised when that occurs that we have somebody who is acting either irresponsibly or in any fashion subjecting the national security to any inherent danger.

My point is really that I think it is an illusory concern. Most of the information that I have been exposed to—and I have not been privy because of the rules you people have followed concerning what you have been given by the executive branch—is in the public domain already; and I suspect that this morning's comments on what you found at the White House this week tends to confirm that thesis.

Second is what I have talked about with Mr. Pike and Mr. McClory—the hope that we could make sense of rules which right now don't provide any kind of orderly process to be followed by Members of Congress, to minimize the likelihood of that being a problem in an undisciplined or unrestrained way—

Mr. MILFORD. Excuse me, I am referring to the Constitution. It is rather clear that a Member can say anything on the floor that he wants to say.

Mr. HARRINGTON. And I don't think that that in any way should be infringed.

Mr. MILFORD. So, again, back to my original question: Every Member has access—what is to keep him on his own volition from unilaterally releasing whatever he considered—

Mr. HARRINGTON. His own judgment and conscience.

Mr. MILFORD. With 535 Members, there are bound to be wide differences.

Mr. HARRINGTON. I hope there will be, and I think that is the strength, frankly, of this process, if we would only recognize it.

Mr. MILFORD. Another question: If the United States should outlaw covert activities, as you contend we should, how would you propose to stop covert activities carried on by adversary nations?

Mr. HARRINGTON. How would I propose to stop them?

Mr. MILFORD. Yes.

Mr. HARRINGTON. By whatever methods we have that would acquaint the requisite Government branch and public with the danger—if there is a danger—and to deal with it openly. But I think that one of the things that we have got to take risks on, Mr. Milford, is refusing to take on the coloration in dealing with these problems of societies we regularly condemn. I think we have become, in the eyes of many people in this world, not unlike the societies that we have suggested are closed in nature, and are adapting to techniques that they practice as a rationale for our own survival. I think that that is inimical to preserving what we are all about as a people. I am

suggesting that we can deal with a foreign threat, but ought to deal with it openly. Justify it as a threat, and do what we can to convince a substantial body of public opinion and the Congress of that, before we take action.

Mr. MILFORD. But if the activity by an adversary is covert, and it is its covert activities that we are talking about, there is both a public unawareness and an inability, really, to publicly make your case—

Mr. HARRINGTON. Why?

Mr. MILFORD [continuing]. So that the American people would be aroused. This is really where the guts of the problem comes in. We could go out to the people and say, "Look, the Russians are down here in Lower Slobovia, and they are in here and they are corrupting the country." But we can't make our case although we know it is happening.

Mr. HARRINGTON. Why can't we? That is my point. Why can't we—with what we are doing now, with intensive efforts at persuasion going on daily on the part of the CIA to involve us indirectly in Angola? If there is a legitimate basis for saying this country's interest is served by countering the Cuban and Russian involvement, then why not make the case publicly and get general agreement?

Mr. MILFORD. Because we can't prove the case.

Mr. HARRINGTON. Then I don't think we ought to be involved if we can't prove the case.

Chairman PIKE. The time of the gentleman has expired.

Mr. Johnson is recognized for 8 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Harrington, if a congressional oversight committee is set up, do you think that the present law, which requires the reporting of covert activities to the six committees, should be changed?

Mr. HARRINGTON. You mean the existing law? Are you talking of the so-called Ryan amendment?

Mr. JOHNSON. The Ryan-Hughes amendment. But at any rate, the act of 1974 states they have to report in timely fashion. That has been interpreted by the present Director to mean almost immediately, so he has to come up and report to six committees. If a congressional oversight committee is setup, what would you say with respect to that? Should they have to continue reporting to the six committees, in addition to the oversight committee?

Mr. HARRINGTON. That is assuming that you give away the premise that they are allowed to continue this kind of activity.

Mr. JOHNSON. Covert activity?

Mr. HARRINGTON. I think that I would keep it as broad as possible, having an appreciation of how oversight has gone in the past. I think that that, if you look at the record frankly—and I am talking only about the International Relations Committee—is a sham, anyway as it has been practiced this year.

I don't even know that I would accept the notion that they have been substantially in compliance, either in reporting in a timely fashion or in dealing with the substance.

Mr. JOHNSON. But it seems to me that that then makes Colby or the next director the errand boy of Congress. He has spent an inordinate amount of time here.

Mr. HARRINGTON. I have listened to that litany.

Mr. JOHNSON. It's true. I don't think there's any question about it. You must understand that I am one of the few members of this committee who would like to do away with covert operations totally, but I don't see any realistic possibility of that. As I go through the process of thinking about how we are going to control it, I think that reporting to six committees is an inordinate burden on a man who should be running the Agency. But if we only have one committee that he reports to, then you get back in that same old ballgame that you had before—unless the membership of the committee is composed in such a fashion that it isn't made up of just the buddies from the Armed Services or the Appropriations or Foreign Affairs Committees. I run into a problem there.

Then what do you think about the possibility of having the committee itself—this oversight committee itself—make reports to the rest of the Congress, perhaps in a sanitized version that would be available to anybody? Is that possible?

The problem I see is that if you have an oversight committee, you are in great danger of establishing a super-committee that, in effect, makes foreign policy or endorses covert operations.

That means that 20 or 30 guys could wind up making foreign policy for 535. That seems to me to be an unconstitutional premise, which leads me back to the conclusion that there is no way you can conduct covert operations without doing it the way it has been; because the gentleman from Texas is exactly right: If everybody in the Congress knows about it, it's going to be leaked.

I think I can convince him that unless you continue the present system of total secrecy, you have to do away with it. Otherwise, it will be leaked through the various processes that go on. But I don't see any way around this. It just seems to me to be a circle, because of the various constitutional requirements and the penchant for secrecy that we all have.

The other day, one of our staff members classified a graph "top secret," and he has been out there raising Cain with the CIA because they won't give him anything. The first time he gets a chance, why, bang, on goes the red marker. He will never be allowed to forget that. I think that is an inherent problem.

I think perhaps we should change the thrust of our argument on what is right or wrong with respect to covert operations—because frankly there have been some kinds of political intervention, political covert operations, which I personally wouldn't have done. But neither do I find them so distasteful or immoral or anything else that I could say they should never have been done. I wouldn't have authorized them, but neither can I characterize the people who did in the same manner that you would characterize somebody who authorized an assassination plot.

How can you justify a supercommittee in the Congress? You can't, can you? At the same time, you have to recognize that if 535 guys have access to this information, that doesn't work out either, does it?

Mr. HARRINGTON. This is what puzzles me—the inherent lack of confidence in us and this business of saying we can't be trusted.

Mr. JOHNSON. I am not saying that. I am just saying that your conscience is going to come into play at a different point than mine is or the chairman's is or Mr. Dellums' is. I am not saying these 535 guys are



untrustworthy; but if you are engaging in covert operations it is going to be publicized sometime. I don't think there is any way you can challenge that. I am not challenging it on the basis of untrustworthiness but as a fact.

Mr. HARRINGTON. There is a theme running through all of this—basically a willingness to say that can happen here and we see it readily. But for the sake of the history of these agencies over the past 35 years, the absence of that has been very little really except their having it come into the public domain at their own point in time and their other interpretation. It is just a rejoinder that I think is a risk that ought to be taken—rather than attempting to narrow it, or to suggest that it is the basis for something by way of another approach which will keep that in the traditional narrow confines. I just don't really accept it.

I think part of what would cure it, frankly, is an effort to address the underlying question that the chairman and I have dealt with earlier this morning—the whole question of the abuse of the classification process and its wild and totally irrelevant usage in many instances. That might very well get people feeling there is a lot more sanctity attendant—if that is the appropriate word—to the whole process involving secrecy.

On the question of a committee, I don't really have a feeling one way or the other. I think I have expressed, in talking with Congressman Aspin, my feeling that I would almost like nothing done, rather than to have the impression created and broadly held across the country that there has been success in this effort. I reject that totally at this point in terms of the fundamental objective of Congress educating the public to what we have had develop in this country. You must first develop a better sense both for the Congress and for the public of the inherent problems that you confess this morning are presently irreconcilable or insoluble.

Mr. JOHNSON. They are insoluble unless you stop them, in my judgment.

Mr. HARRINGTON. And we agree that that is not likely at the present time.

Mr. JOHNSON. I don't think that is likely; no. If you don't try to deal with the problem, the dealer from Wisconsin will, so let's you and I try to figure out something about how you can do this.

Who would you put on the committee?

Mr. HARRINGTON. You could rotate membership on the committee.

Mr. JOHNSON. Would you provide for a rotating membership?

Mr. HARRINGTON. One of the healthier things you might do is extend the life of this committee until the end of the 94th Congress and continue to get public awareness of the sort of thing that you might be aware of. I suggest, looking at the size of your staff and the amount of time you have had, you could not possibly have covered in detail or with the intensity needed the matters that would give us even the broad outlines of what we are dealing with here.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman.

Mr. LEHMAN. Thank you, Mr. Chairman.

Hanna Arendt, in her book on banality of evil, called "Eichmann in Jerusalem," infuriated the Israelis by saying Eichmann was

not a monster—that he was an ordinary man, but he was doing monstrous deeds and we were all capable of these kinds of things. By the same token, you can think in terms of people in the White House who were involved in the Watergate conspiracy. They were the most ordinary people in the world—Dean, Haldeman, that whole crew. They were just plain, ordinary people.

I guess what I am trying to get to is that ordinary people can get caught up doing monstrous deeds. I think this committee should take a forward look down the road, to see what kind of a safeguard we can install to prevent these types of things from happening.

In looking down there, how do you blow the whistle when you see these things happening? I guess I just set out my really deep concerns with this kind of level of activity. What can you do, without destroying the system? How can you protect the system, without destroying it? What do you recommend? Which way do we go? Is there a cure?

Mr. HARRINGTON. I think the system has been doing a pretty good job of destroying itself, Mr. Lehman, over the course of the last dozen years, if the alienation of the American people from their Government is any indication. The sense that I think exists is that the system itself is in fundamental need of reformation, and I don't think that starts with just dealing with the periphery or dealing with it in a very narrow fashion.

I don't have any particular wisdom to offer you, as much as just a feeling that it has got to be premised on a belief that that alienation is very deeply rooted.

Mr. LEHMAN. The alienation is not caused by evil people in that sense. Alienation is caused by ordinary people. The real safeguard is not against this monster we are going to find in our society—that is self-evident to everybody—but the little deeds. Suppose you find out through an ordinary process that there are American paramilitary people in Angola. What do you do about it?

Mr. HARRINGTON. What do you do?

Mr. LEHMAN. What do you suggest? Where would you go?

Give us your recommendation for a kind of a structure, if you need one, for something like that.

Mr. HARRINGTON. If you were dealing with it in a contemporary sense, it seems to me what you do is expose it.

Second, if you are concerned about it from the point of view of feeling it is proper, then you justify it to the Congress and to the American public and get them committed to the view that our national interest is involved, rather than engage in this kind of plausible denial that allows them to do it and not accept responsibility for the involvement.

In the longer term, I don't know. Beyond what I have suggested already, continue sensitizing all of us to this sort of thing. Continue to develop a consensus—which I don't think, in talking with the committee, exists by any definition this morning—either in what you can recommend or what the shape of the intelligence activity should be.

It would be a singular contribution. I think there is a lot more to be done there before you can come to any conclusions at all about where you can go to offer corrective measures right now. I think you have only begun that, and that is what I think is the real tragedy of this experience.

Mr. LEHMAN. I yield back my time.

Chairman PIKE. The time of the gentleman has expired.

Mr. Harrington, we thank you very much for your presence here today, and for the always thought-provoking presentation which you have given us.

Our next witness is the distinguished chairman of the Republican Conference, Congressman John Anderson of Illinois.

Mr. Anderson, we welcome you here and we again appreciate your devoting time and energy to this most difficult subject.

# **STATEMENT OF HON. JOHN B. ANDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. ANDERSON. Thank you very much, Mr. Chairman and members of the committee.

I appreciate your introduction, Mr. Chairman, and also the opportunity, which I hope will be relatively brief, to testify today on the congressional role in intelligence oversight.

The revelations of this inquiry and others of intelligence community wrongdoing convince me more than ever that the time is long overdue for the Congress to more seriously and effectively exercise its oversight responsibilities in this area.

The important work of this committee and its Senate counterpart, as well as the findings of the earlier Watergate and impeachment inquiries, are essential first steps in calling public attention to the shocking abuses of power perpetrated by Government agents and agencies.

To those who would rather not know these things or think our intelligence agencies should be accountable to no one, I would strongly commend a basic bicentennial reading list consisting of the Constitution and Declaration of Independence.

If we do not awaken to and act on such flagrant violations of our basic rights, traditions and laws by our own Government, we may as well relegate these documents to the status of historic relics as part of our Bicentennial observance. This inquiry to me, in short, is an important affirmation that we do not intend for that to happen.

Mr. Chairman, now that we have taken the important first step of uncovering these abuses, I think we must take a second step—a step backward, if you will—to view in its entirety the composite picture of these revelations, covering better than two decades, in order to trace its origins and discern its meaning.

What strikes me most about this picture is that it is not the work of a particular individual, agency, party, philosophy, or policy; rather it reflects an evolving style, mentality, way of thinking and operating—mostly rooted in the cold war. It is not a pretty picture as we see it now; but it did happen, and it did grow without careful supervision and critical scrutiny.

I offer these observations not as a revisionist historian; many of our fears of that earlier period were justified, as were many of our responses to real or perceived threats. Nor do I offer these observations to imply that no one was to blame for what happened; obviously, people in power set these events in motion and not some sinister force.

What I am suggesting, though, is that there was little conscious attempt to relate these pieces to the whole and recognize that a pattern

of practices was evolving into standard operating procedures. These, in turn, were later applied to situations which clearly did not warrant such practices.

It is clear now at least that all this was allowed to occur because the executive branch failed to adequately supervise or rationalize these activities, and the legislative branch failed to question or oversee these activities. While the present findings make some attempt to trace the lines of authority and responsibility, we simply cannot ignore that these lines ultimately lead back to us in the Congress, as well as to the various Presidents in power over this period.

This brings us to our third step which, in the final analysis, will be our most important step, and that is where we go from here. It is generally accepted and agreed upon that we must have better executive supervision and congressional oversight of the intelligence community. Obviously, this committee will be making recommendations in both areas. Let me confine myself today, though, to the latter.

I wouldn't pretend to have the expertise that members of this committee have now developed with respect to the organizational detail of the intelligence community as it exists in the executive branch.

What little validity my comments and my recommendations have, I think, would relate to what my conception is of the role of the Congress.

It has now become conventional wisdom that the Congress must enact tighter restrictions on these agencies and create some new type of oversight mechanism. I agree. But I would only hasten to caution that no amount of new laws or structural or procedural reforms are in and of themselves any assurance against a recurrence of such abuses. We pass laws that we don't oversee and we have committees that don't oversee. I would like to think of myself as a reformer, but I am the first to admit that reforms are meaningless if we don't have the will and persistence to make them work.

The second cautionary note I would raise is against over-reacting by enacting a whole shopping list of reforms which may be rendered instantly meaningless by virtue of their sheer numbers and the impracticality of either complying with them or enforcing them.

I have a brief quotation here in my statement from the fine report of the Senate Watergate Committee of last year:

In approaching its task of recommending remedial legislation, the committee is mindful that revelations of past scandals have often failed to produce meaningful reform. Too frequently, there is a tendency to overreact in the wake of a particular scandal and burden the penal code with ill-considered laws directed to the specific—perhaps aberrational—conduct exposed. This proliferation of criminal laws has tended to over-complicate the penal code and, consequently, to impair the effectiveness of its administration. Moreover, legislation is, at best, a blunt weapon to combat immorality.

I think there are some words of wisdom in that bit of philosophy from the Senate Watergate Committee.

Third, I would caution against legislating in such a detailed and restrictive fashion as to make it impossible for our intelligence agencies to carry out their legitimate functions. In our desire to correct abuses of our rights by the Government, let us not make it impossible for the Government to prevent such abuses by others.

While we may draft a law with a past abuse in mind, we must also consider its ramifications for all future contingencies. I would rather

leave some flexibility in the law, so long as there is strict supervision and oversight, than to place a permanent straitjacket on the intelligence community.

Having offered these general words of caution and observations, let me proceed to make some specific recommendations on congressional oversight of the intelligence community.

As most of you are aware from our debate on creating and re-creating this committee, I strongly support the concept of a permanent joint committee on intelligence operations. On January 14 of this year, I joined with Congressman Biester in introducing H.R. 261 to create such a joint committee to conduct continuing oversight of our foreign intelligence community.

In addition to its continuing oversight responsibilities, the joint committee would have exclusive jurisdiction over the legislative authorizations for the various foreign intelligence agencies named in the bill, including the CIA, DIA, and NSA.

The joint committee would be comprised of 18 members—9 from each House, with a 5/4 majority/minority party ratio—appointed by the majority and minority leaders of each House respectively. The nine members from each House would include two each from the committees on Armed Services, Foreign Affairs and Appropriations, and three at-large members.

Mr. Chairman, I appreciate the fact that this is not a novel suggestion, and there are numerous variations on this proposal which have been introduced, including bills to combine jurisdiction over both foreign and domestic intelligence agencies in such a committee. There obviously is no magic formula and the success of any new oversight committee will ultimately depend on the people appointed to it and the kind of job they do.

My own preference for confining this to foreign intelligence is based on the particularly sensitive nature of our foreign intelligence operations vis-a-vis domestic intelligence activities.

I think our existing standing committees in the House and Senate can adequately handle these domestic matters. Moreover, the joint committee will be more effective if it is not spread too thin. Exercising oversight of foreign intelligence activities alone should be a full-time job for such a committee.

Finally, as a member of a joint committee for more than a dozen years now, the Joint Committee on Atomic Energy, a committee that has legislative authority, I can attest I believe on the basis of that experience to the practicality and success of this approach in handling very sensitive matters.

There have been no leaks that I am aware of in the history of that committee, which was created way back in 1947 by the original Atomic Energy Act.

Let me make one final point which is not in my prepared statement. I would very much favor giving that joint committee legislative authority.

In other words, it would not simply be an oversight committee. It would have legislative authority. And, therefore, I have not included in this statement a long detailed prescription of perhaps the guidelines that could be given to the CIA, the DIA, and the intelligence community on such matters as covert operations.

I think that a joint committee could be entrusted with legislative responsibility which could then encompass, obviously after further hearings, the responsibility to come forward with those detailed prescriptions and guidelines that might avoid some of the abuses that have been so well brought out by the work of this committee.

Mr. Chairman, this is my statement.

Chairman PIKE. Thank you very much, Mr. Anderson.

In general, I agree with your statement, but there are elements of it with which I have great difficulty.

You stated, in effect, that you think our existing standing committees in the House and Senate can adequately handle these domestic matters. This particularly troubles me, in view of the revelations which have been made both in this committee and in the Senate committee about a continuing pattern of invasion of private rights and unequal enforcement of the law by the FBI over a long period of years. It is my feeling that the oversight of those committees on the domestic side was at least as dubious as those having the job on the foreign intelligence side.

There is a practical problem, and you would know this better than I. To the extent that we add jurisdiction to any oversight committee, particularly when we give it legislative jurisdiction—and I think it would be meaningless if we did not give it legislative jurisdiction; it would be essentially powerless if we did not give it legislative jurisdiction—we run into that great problem of the removal of jurisdiction from people who hold it now. Rather than the danger of our passing a large shopping list of reforms, I anticipate great difficulty in passing any reforms so long as we are attempting to take jurisdiction away from committees which have it at the present time.

I would like to hear your comments, as a legislative expert, on that very practical problem.

Mr. ANDERSON. I appreciate the chairman's description of me as a legislative expert. I would call to the committee's attention the fact that in the bill to which I referred—which I introduced along with Mr. Biester in January of this year, H.R. 261—there is on page 5, beginning with line 6, a provision to the effect that "nothing in this subsection shall be construed to deprive any committee of either House from exercising legislative oversight with respect to foreign intelligence activities and operations relating to the jurisdiction of such committee."

That, obviously, can be criticized on the grounds of duality. That dual jurisdiction means that something is going to fall between the cracks. If it is everybody's business, it becomes nobody's business. I would say, however, that granted the difficulty of budging some of these committees that have been accustomed to exercising jurisdiction in this area, we have had a rather poignant example. I think, in the Rules Committee of a change of attitude on the subject of energy. And member after member of that committee, as well as other Members of the House, have come to me and said we wish we had a chance to undo the mischief that we did last year in adopting the substitute to the Bolling-Martin committee resolution which would have set up a special committee on energy.

We realize now that the fragmented jurisdiction over that subject—parceled out, I believe, to more than six subcommittees of the House—is not the way to address ourselves to the problem.

I think if we had it to do over again we would now be ready to create a committee on energy, and I feel that as a result of the work of your committee and the publicity—very welcome publicity—that you have given to the abuses that have gone on in this area—

Chairman PIKE. Some of the publicity I didn't particularly welcome.

Mr. ANDERSON. I will accept the amendment. I think you have made some converts. There are a lot of people who have stood on the traditional ground that, "this is my committee's work and let no one trespass on this territory," but who now realize that we have got to have a more rational, logical, concentration of authority than we have in this area. I don't think the difficulties are quite as great in that regard as you would suspect.

Now, you made another point, I believe, in your question, and that was that you disagreed or doubted the statement I made—that I felt with respect to domestic intelligence agencies, notably the FBI, the existing committees could handle that matter.

I have been as severe in my public criticism of the abuses there as has the chairman, and I felt particularly that the revelations that took place with respect to FBI surveillance of Martin Luther King were shocking and offensive to every sense of justice I think that any of us have. And obviously, there is need for more oversight than has occurred in the past.

My optimism is grounded in part on the fact that in the committee reorganization act that we enacted in the 93d Congress we did, of course, put in language requiring new oversight responsibilities by the standing legislative committees, requiring them, I think, to set up subcommittees that would exercise that oversight function.

So, I think, in that legislation we have zeroed in on the fact that committees have not carried out their responsibilities of oversight in the past and are now mandated by this act to do so. There is still the problem, the further problem—and the chairman didn't refer to it, but as a former member of the Committee on Armed Services I know that it concerned him—of the possibility of this sort of incestuous relationship that goes on between legislative committees that have under their wing—and sometimes it becomes a protective wing—a particular agency of the executive branch.

I don't know how you address that. Admittedly, if you continue to give the Judiciary Committee—which would be the appropriate committee with respect to the FBI—the possibility of maybe developing too close and harmonious a working relationship with the Department of Justice, there is some danger. But again, I think the very salutary reminder that we have had through the work of your committee, that these evils do exist and have gone on, is going to be a pretty sharp incentive to these oversight subcommittees of other legislative committees to do their job.

Chairman PIKE. Mr. McClory.

Mr. McCLORY. Thank you, Mr. Chairman.

I want to commend my colleague from Illinois for interesting himself in this subject and assuming responsibility for helping to see that the House of Representatives undertakes to correct and improve a situation which has deteriorated because of a lack of appropriate executive and legislative oversight. I note, particularly in your statement, that you are willing to assume that our inaction over a long period of time must necessarily also cause us to assume responsibility for the excesses or abuses that have occurred in this area of intelligence.

I am thankful that the gentleman's effort to establish a joint committee did not succeed. Otherwise, I don't know whatever would have happened to the very important work which this House Select Committee has been able to perform. I would try to call to your attention or impress upon you a distinction between the Joint Committee on Atomic Energy—on which you serve so ably—and the oversight function which the House of Representatives, as an institution, must assume with regard to this subject of intelligence.

In the first place, we were entering a new field when we went into the subject of atomic energy. We are dealing with an old field when it comes to the oversight function here, even oversight with regard to intelligence.

Mr. ANDERSON. Will the gentleman yield?

Mr. McCLORY. We have had different committees carrying on very limited oversight during this period, and I think there is more of a correlation with the House Committee on Standards of Official Conduct, the House Committee on the Budget, and the general House oversight function than there is with the Joint Atomic Energy Committee, or even the Joint Committee on Internal Revenue Taxation.

Will you comment on that.

Mr. ANDERSON. I don't want to leave the gentleman with the impression that I think there is an exact parallel, but my reason for selecting that committee, in addition to the fact that I have served on it for a number of years, it is the only Joint Committee that has legislative authority; and I feel very strongly, as the chairman has said, that this committee would mean nothing if it didn't have legislative authority.

The other point I would try to make is that in the joint committee there has been a high degree of security, so I think we can banish the fear that you have a committee and there are just going to be leaks all over the place.

Finally, in the Joint Committee there has been a relative degree of comity between the two Houses in carrying out a joint function—not always; sometimes we have our problems, but generally it has worked.

Mr. McCLORY. I would like to point out in addition that, with respect to intelligence activities, and especially the CIA, virtually its entire function is overseas. It has to do with international relations, and the Senate, I am sure, constitutionally—and you made appropriate reference to the Constitution and the Declaration of Independence—assumes a different type of authority with regard to the confirmation of ambassadors, and the Secretary of State, and other officers in that area of foreign relations. So we might have authority vested in the Senate, which is different from that in the House of Representatives, and the membership would feel that they occupied different basic roles from that which they would assume with regard to their functions on the Joint Committee.



Mr. ANDERSON. The other reason that I would suggest to the gentleman for my having been attracted to the device of the Joint Committee is that we are all terribly busy. I am mindful of the tendency over the years for committees to proliferate; and it seemed to me, from the standpoint of avoiding duplication, the Joint Committee would provide one forum, one place, where the members of the intelligence community would testify. They would be held accountable, and we would avoid, again I repeat, some of the duplication that does go on in the work of the Congress.

Mr. McCLODY. I thank the gentleman.

I yield back the balance of my time.

Chairman PIKE. Mr. Anderson, it is my understanding—and I want to say this for the benefit of the members—that you have a time problem at the moment.

Mr. ANDERSON. I do, indeed, Mr. Chairman.

A conference report in which I am greatly interested is now on the floor and I had some remarks to make about it.

Chairman PIKE. I am told there are only a few minutes left for debate on it. I would simply ask that our staff call the next witness whom we had not alerted—

Mr. ANDERSON. I will be happy to come back for further questions.

Chairman PIKE. Can you stay here for a few more minutes while we get Mr. Quie up here to testify? We will proceed, but I ask the members to limit their questions as much as possible to give everybody a chance.

Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Anderson, I appreciate your testimony, your interest, and the thoughts you expressed this morning.

First of all, you may or may not know that we have received testimony that the GAO, which is the investigative arm of the House, has been totally thwarted in their ability to conduct audits of the intelligence community by virtue of the fact that the information is compartmented, available only on a need-to-know basis, and cryptologic, so that our investigative arm, which is very important in terms of our ability to conduct effective oversight, has been totally thwarted in its ability to do an effective audit. This renders the concept of accountability null and void.

The question that I would like to raise with you is: Should the GAO have access to all the intelligence community, and should compartmentation thwart the ability of GAO to carry out an effective audit and/or any other kind of investigation upon request of the Congress or appropriate committees?

Mr. ANDERSON. I will be very frank with you, Mr. Dellums; that is a question to which I have not given much thought, but I quite agree with your general premise that if the principle of accountability is to mean anything at all, Congress must have at its disposal the kind of expertise which certainly is represented, I would think, in the GAO to look into matters that would be germane to any investigation.

I don't know what you have in mind for the function of the GAO—whether it would go beyond an audit of financial transactions, for example. Of course, once you get into how people spend their money it gives you a pretty good idea. I suppose, of the overall pattern of what the activities are. But I think my initial impression—I might want to

revise this if I thought about it a little bit more—my initial impression is that if Congress is going to conduct oversight, be it through a joint committee, select committee, or some other institutional mechanism, we must have an understanding that we can call on those people we feel we need to use in connection with that investigation and that oversight, and that could well include the GAO.

It would seem to me that some means ought to be found whereby we could use their expertise in delving into certain matters; yes.

Mr. DELLUMS. Given the time, Mr. Chairman, I would just like to ask one additional question.

It goes to the issue of full access to information, because certainly if there is to be effective oversight on the part of the Congress we must have access to information.

I would like to couch the question in these terms: Senator Taft once said, and I would like to quote directly:

Secrecy deprived the Senate and Congress of the substance of the powers conferred on them by the Constitution of the United States.

And from my perspective, the meeting of the constitutional requirement of congressional participation in national security and foreign affairs matters depends wholly on the loosening of the executive monopoly on information and insuring congressional access to that information.

I would like, with that sort of open-ended comment, to ask you to comment on that statement.

Mr. ANDERSON. There isn't anything in the philosophy of the Senator which you have just quoted with which I would disagree. I certainly subscribe to many of the things that were said by the witness who preceded me in this chair about overclassification and the need to somehow get around that problem that I think leads—as I told a member of this committee the other day—not to the assertion of executive privilege but executive arrogance in hiding from us things that ought to be given to the Congress.

I find nothing in the Senator's statement with which I would disagree.

Mr. DELLUMS. Thank you, Mr. Chairman.

Chairman PIKE. I have to announce to the members of the committee that Mr. Quie now tells us he is the floor manager of the side of the bill that you, Mr. Anderson, want to go speak to. It demonstrates some of the difficulties of our time constraints.

Chairman PIKE. Mr. Anderson, I will simply ask you to stay as long as you can and leave when you must, at which time the committee will recess until 2 o'clock this afternoon.

Mr. Aspin?

Mr. ASPIN. Thank you.

Mr. Anderson, just a couple of questions.

On your proposed joint committee, what do you think about rotating membership?

Mr. ANDERSON. I think that is a good idea.

Mr. ASPIN. It is not part of your proposal.

Mr. ANDERSON. I didn't go into all of the details. I suggested 18, which is, I guess, an arbitrary number: but I don't think it should be too large and it shouldn't be too small. Rotation is a principle that appeals to me on a committee of that kind.

Mr. ASPIN. Do you anticipate that this committee assignment would be in addition to regular committee assignments?

Mr. ANDERSON. Well, the standing rule of my party conference is, that you can't be a member or more than one major standing committee, but as we define the Joint Committee on Atomic Energy, it is not a standing committee.

I have never really quite understood why. It has been standing for some time. But it isn't, and so we can serve on a major committee and also serve on that committee. I think the same rule should probably apply in the House; yes.

Mr. ASPIN. Mr. Chairman, did you want to finish this?

Chairman PIKE. No.

As long as Mr. Anderson is not——

Mr. ANDERSON. I am getting a little uncomfortable.

Chairman PIKE. You will have to tell Mr. Quie, I am afraid, that because of our own time schedule we will not be able to hear him and I hope he will submit his statement.

[The statement Congressman Quie was scheduled to present to the committee is printed on pp. 2031-2035 of the appendixes.]

Mr. ANDERSON. I would be glad to come back for more questions if there are some.

Chairman PIKE. Thank you. We have other witnesses.

The committee will stand in recess until 2 o'clock this afternoon in room 2247.

[Whereupon, at 11:40 a.m. the committee recessed, to reconvene at 2 o'clock the same day.]

#### AFTERNOON SESSION

### REFORM OF THE INTELLIGENCE COMMUNITY

Chairman PIKE. The committee will come to order.

Our witness this afternoon is a distinguished historian who can perhaps add some real perspective on the question of where we are and where we are going. Prof. Arthur Schlesinger, Jr., is a well-known historian and author. He has been a recipient of a Pulitzer Prize for history, a Guggenheim fellowship, an American Academy of Arts and Letters grant, and the Pulitzer Prize for biography in 1965.

Professor Schlesinger, we thank you for coming. I want to apologize for the poor turnout of members. We do find that if we are not looked into an acute controversy the television cameras seem to disappear, and with the disappearance of the television cameras goes some of the momentum for attendance. I want to thank those who are here.

Please proceed, Professor Schlesinger.

#### STATEMENT OF ARTHUR SCHLESINGER, JR., FORMER SPECIAL ASSISTANT TO PRESIDENT JOHN F. KENNEDY

Mr. SCHLESINGER. I must say I am complimented. I have testified before congressional committees on other occasions, and I am very complimented by the distinguished turnout today. It compares favorably.

I have a prepared statement.

Chairman PIKE. We thank you.

Mr. SCHLESINGER. Perhaps I should begin with a word about my qualifications, such as they may be, for holding forth before this committee on the subject of the role of Congress in relation to the Government intelligence services. I was an intelligence officer in the Office of Strategic Services during the Second World War, ending as deputy chief of the Secret Intelligence-Research and Analysis (SIRA) Reports Board in Paris in 1944-45. Later, as special assistant to President Kennedy, I was asked by the President after the Bay of Pigs to write a report on the possible reorganization of the intelligence community. I regret to say that I did not retain a copy of the report, which was highly classified, but I understand that the Senate select committee has a copy in its possession.

In a footnote, I attach a description of the report given by Roger Hilsman, who was then Director of Intelligence and Research in the State Department, in his book "To Move a Nation," published in 1967:

It was in the Killian committee and the White House that discussion centered on the larger question of CIA's role in the making of policy and the conduct of foreign affairs. Within the White House staff, Arthur M. Schlesinger, Jr., spent more time on the problem than anyone else, and it was he who developed a full and reasoned set of proposals. His basic thesis was that secret activities are permissible so long as they do not affect the principles and practices of our society, and that they cease to be permissible when their effect is to corrupt these principles and practices. \* \* \* Schlesinger argued for a drastic overhaul of the intelligence setup. What he proposed was (1) taking the research and estimating function and all other overt activities out of CIA and also taking the Bureau of Intelligence and Research out of the State Department and combining the two into a new, independent agency; and, (2) leaving CIA with its covert functions, but renaming it to escape the tarnished image and putting the new agency directly under the State Department for "policy guidance."

That report, as I recall it 14 years after, was concerned primarily with devising better methods of supervision and control within the executive branch.

The events of later years have persuaded me, however, that it is vain to rely on the executive branch—or at least on recent Presidents—to undertake serious remedial action. Even today, after public disclosure of a record of squalor known for many months to the White House, the President has still to offer a program designed to prevent the repetition of such crime and folly in the future. That is why I welcome the initiative taken by your committee in holding these hearings—and why I appreciate your invitation to set forth some thoughts today.

The problem, as I see it, is to strike a just balance between two opposing considerations. The first consideration, in my judgment, is that many of the functions performed by the CIA are vital to the national security of the United States. Intelligence about other countries—even intelligence secretly obtained inside other countries—remains a necessity in a world of grimly antagonistic national states. So does counterespionage. Covert action—action designed not to gather or protect information but to influence events—raises grave problems, some of which I will mention later, but I can visualize circumstances in which the national safety might justify resort to clandestine political operation. Activities in all three categories demand for success a screen of secrecy.

The second consideration is that in a free democracy these activities must be brought under definite and effective control. The record shows beyond cavil that the CIA has abused its power; also that higher-

executive authority may have on occasion connived in or even instigated such abuse. The problem of establishing control involves the executive branch as a whole as well as Congress. But it must begin within CIA itself. The Bay of Pigs operation, for example—and I was among those who took part in the series of very top secret meetings before the Bay of Pigs—was tightly held within a small CIA faction; even the CIA intelligence branch was never brought in—a fact which was not clear to the Kennedy White House at that point—though its estimate of the probable reaction of the Cuban people to an invasion of exiles might have been instructive. CIA pretends to have an Inspector General, but this officer, the Rockefeller Commission admits, “was sometimes refused access to particularly sensitive CIA activities.” The CIA program of administering LSD to unsuspecting subjects, one of whom after this therapy killed himself, started in 1953; the Inspector General did not hear about it until 1963. The CIA program directed against dissenters in the United States was—again I quote the Rockefeller Commission—“not effectively supervised and reviewed by anyone in the CIA who was not operationally involved in it.”

In the case of the assassination projects, the Director of CIA—Allen W. Dulles himself—was not told about the original anti-Castro plot of 1960 until a point after lesser CIA officers had put on a contract in the underworld; and Dulles’ successor, John McCone, was told nothing about the subsequent anti-Castro plots until late in 1963 when he learned that his own Agency was involved with the Chicago hoodlum Sam Giancana by reading an article in the Chicago Sun-Times. Even then he was given to understand that the operation had been terminated. One’s impression of the CIA is of an agency singularly and fatally defective in mechanisms of internal control.

Nor has external control by the executive branch been effective. The assassination projects, for example, were never submitted for clearance to the Special Group, the subcommittee of the National Security Council charged with responsibility for authorizing all important covert operations. For 20 years after 1953, the CIA ran under four Presidents a mail intercept program of massive size and indisputable illegality. According to the Rockefeller Commission, “No evidence could be found that any briefing of any President occurred.”

This is the situation that to this day the executive branch has declined to do anything significant about. In view of the failure of the President to propose a program of reform, Congress now offers the only hope. Speaking realistically, this seems a frail hope—unless Congress radically changes its own thinking. For it was Congress, through its own deliberate decisions, that made—and kept—the CIA an agency uniquely immune to congressional control. The Central Intelligence Agency Act of 1949, for example, exempted the CIA from Federal laws and regulations on spending, on disclosure of the budget, on disclosure of the numbers, names, titles, functions, and salaries of its employees. Congress also declined to put our intelligence services under the State Department, though British intelligence, for example, takes instruction from and is accountable to the Foreign Office.

As early as 1953 Senator Mansfield questioned the wisdom of allowing “almost complete independence” to so powerful an agency. “Once secrecy becomes sacrosanct,” Senator Mansfield warned in 1954, “it

invites abuse." His warnings fell on exceedingly deaf congressional ears. Mansfield first proposed a joint committee on central intelligence over 20 years ago. That proposal has got nowhere in the generation since. In 1971 Dean Rusk told the Senate Judiciary Committee, "I have had the experience of giving information to some Members of Congress who have said to me, gee, I wish you hadn't told me that. I really don't want to know that kind of thing." Let Congress not be unduly self-righteous now. If the CIA has run wild, it is because Congress permitted, if it did not encourage, the CIA to do so.

Assuming, though, that recent events—signalized by the passage in 1974 of the Hughes amendment to the Foreign Assistance Act and by the establishment this year of the two select committees in the Senate and the House—signify a change of congressional mind and a hardening of congressional will, let us see what Congress might usefully do. The guiding principle, it seems to me, should be this—if I may quote from Roger Hilsman's summation of the thesis of my 1961 report to President Kennedy, that:

secret activities are permissible so long as they do not affect the principles and practices of our society, and that they cease to be permissible when their effect is to corrupt such principles and practices.

First, the first and most effective action Congress could take is to seize control of the intelligence budget—and to cut it drastically. One must candidly say that the recent action of the House in refusing to make public even the aggregate CIA budget figures does not fill this observer with optimism. For the obvious fact is that the intelligence community has had far too much money.

One consequence of having too much money is a temptation to rush into bizarre and profligate projects, like Howard Hughes and the *Glomar*. Another consequence is a lot of people sitting at a lot of desks and trying to justify their existence by thinking up things to do. The Senate assassination hearings have already shown what absurdities will result—the idea, for example, of spraying Castro's broadcasting studio with a chemical that produces effects similar to LSD; or the idea of dusting Castro's shoes, in case he left them outside his hotel room, with thallium salts in the expectation that this would cause his beard to fall out and destroy his charismatic appeal; or the idea of depositing an exotic seashell, rigged to explode, in the waters where Castro liked to skin dive.

Cutting the CIA budget in half would eliminate such nonsense, release these geniuses for jobs as Hollywood script writers or in Santa Claus' workshop, and compel the CIA to reconsider its priorities and concentrate soberly and carefully on serious matters, such as the collection and analysis of intelligence.

Second, Congress must, of course, as even the Rockefeller commission concedes, establish after all these years a Joint Committee on Intelligence. The experience of the Joint Committee on Atomic Energy shows that congressional committees can be entrusted with highly sensitive information. But I do not see such a committee as a cure-all; and I urge that its functions be carefully considered and defined. I would not suppose, for example, that the joint committee would ordinarily receive operational detail of intelligence or counterintelligence projects or that it could usefully attempt to clear any but high-cost, high-risk covert operations. Its main function, I would tentatively suggest,

should be to examine and authorize intelligence budgets. It should also—and I think this is a very critical point—appoint an intelligence ombudsman, to whom any intelligence employee in the intelligence community, with reason to believe that his agency is carrying out improper activities, can turn.

I think one thing the Watergate experience demonstrated is the fact that there are many very decent people in the Federal bureaucracy, including the FBI and the CIA, who were repelled by things they were instructed to do. There ought to be some ordained and proper place to which they could turn—instead of Jack Anderson—and express their repugnance. The creation of an intelligence ombudsman, responsible to the Joint Intelligence Committee, authorized to hear from members of the intelligence community, might provide a useful means of offsetting unduly imaginative initiatives on the part of intelligence officials.

The joint committee should of course be prepared, when necessary, to conduct investigations of intelligence activities, with full and unquestioned access to all relevant documents.

Third, Congress should also take action to improve the control mechanisms for intelligence activities within the executive branch. The critical problem here is covert action. I don't suppose there is any serious belief that we should abolish intelligence or counterespionage. Some would solve the covert action problem by the simple abolition of any covert action capability. As indicated earlier, I am inclined to disagree.

Covert action began mildly enough, with assistance to democratic parties, trade unions, newspapers, and so on, in Western Europe in the early years of the Marshall plan, to counteract subsidies poured in by the Soviet Union to corresponding Communist organizations. In the fifties, U.S. covert action turned ambitious and aggressive. It set itself out not just to support our friends, but to do in our foes. The covert action operators acquired paramilitary delusions, established private armies and air forces, and began to construe their mission as including the murder of foreign leaders. In short, they lost touch with reality. It is evident that the costs of covert action began to exceed the benefits the moment we moved from the support of our friends to the subversion of our foes. The great CIA "triumphs" of the fifties—installing the Shah in Iran, turning out a leftwing regime in Guatemala—cannot be said in retrospect to have much advanced the national interest. On the other hand, the impression of the United States, created by malign and promiscuous CIA intervention around the world, has damaged us very clearly and gravely.

It may even be that one result of our reckless infatuation with malign covert action has been to make the resort to benign and limited covert action impossible for years to come. For the time being, certainly, the CIA should get out of covert action. We have lost all credibility in this field, and there are no present threats to our safety that call for clandestine measures of political intervention. Still, I would not prohibit covert action by statute. I can conceive situations that may justify benign covert action, and I believe we should retain a standby capability for clandestine operations. What is essential is to make sure that, should covert action ever be called for, it will be used sparingly, responsibly, and accountably.

The special group, known in its most recent incarnation as the 40 Committee, has manifestly failed to do an adequate job of controlling

covert action. One trouble is that it consists of overworked and harried officials whose primary responsibilities lie elsewhere. Another is that the CIA has too often neglected to submit its most repellent and least defensible ideas, like the assassination projects, to this committee. Congress must, I believe, take action, since the executive evidently will not, to establish a more effective mechanism.

Congress might, for example, build on an existing institution, the President's Foreign Intelligence Advisory Board. It might give that Board a statutory base, a full-time chairman, a full-time staff. Congress might require senatorial confirmation for members of the Foreign Intelligence Advisory Board. It might require bipartisan representation on the Board as it does on a number of regulatory commissions. It might give the Board full oversight responsibility, including the authority to clear all clandestine operations and all high-cost, high-risk intelligence and counterespionage projects. It might designate chairmen of the Joint Committee on Intelligence as members of the Board *ex officio*.

An alternative might be to give the clearance authority to a full-time review committee, established by the FIAB and composed of senior persons seasoned in international relations and also including chairmen of the joint committee. The FIAB itself would retain oversight authority. In one way or another Congress could, if it wished, create a serious mechanism of control without jeopardizing the secrecy of intelligence operations.

Fourth, Congress should also take action to improve the mechanisms of control within the CIA itself. In this connection, I must dissent from the idea that the Director of the CIA should be a professional. On the contrary, I think that what the CIA has terribly lacked is top leadership sensitive to larger democratic considerations and responsive to our constitutional process. The trouble with the professionals is that they tend to lose their perspective after years of service in a vast, isolated, self-contained, self-deluded, arrogant institution, withdrawn from social and political reality, saturated with the religion of secrecy and adept at concealment and deception. Mr. Colby's commendable forthrightness on a number of issues stands in marked contrast to what testimony has disclosed about his predecessors. "I asked two different top men of the CIA," Senator Goldwater said recently, "if they would lie to protect the Presidency, and they both said they would." What a testimonial to officials in a democratic polity. We need as heads of the CIA persons whose devotion to the constitutional order is greater than their devotion to the Presidency—and they are more likely to be found in the practical world of affairs than in the hallucinatory world of professional intelligence operators.

In addition, it seems imperative to make the CIA Inspector General a serious and weighty figure, as he has never been in the past. I would go farther: Let Congress establish an office of the inspector general for the entire intelligence community of which, let us never forget, the CIA is only, budgetarily speaking, a minor part. The office should have direct access to the Joint Committee on Intelligence and to the FIAB. Let Congress require that the person appointed to that office receive senatorial confirmation. Such action would both impose obligations on and assure support for an inspector general who strives to discharge his duties.



Fifth, finally, and lamentably, it seems to me necessary, in order to avoid repetition of those well-documented occasions when CIA officials have failed to level with the President, with the Special Group, with their own CIA Director and with their own CIA Inspector General, for Congress to make it a criminal offense when any official authorizes clandestine actions in violation of the clearance process set forth by congressional statute. This is a sad conclusion to reach. But given the ineradicable sinfulness of man—a point well understood by the founding fathers—it would appear essential to establish what the Federalist Papers—No. 51—tactfully called auxiliary precautions.

I have no doubt that these suggestions can be improved. But they do seem to me to point in the right direction—that is, they seek to safeguard the secrecy and effectiveness of necessary intelligence operations and at the same time to establish a realistic machinery of accountability and control. Only in this way can we both preserve what is essential in the national intelligence effort and make sure that the intelligence ethos will not corrupt the principles and practices of our democratic society.

Chairman PIKE. Thank you very much, Professor Schlesinger.

We now have a pretty good turnout of members. We are always subject to the whim of the bells on the floor, and I would suggest that a good procedure for us to follow would be to have our other witness, Mr. Robert Murphy, join you at the witness table.

Mr. Murphy, will you come up and give us your statement?

We will withhold questioning of both witnesses until Mr. Murphy has concluded.

#### **STATEMENT OF ROBERT MURPHY, CHAIRMAN, COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT FOR THE CONDUCT OF FOREIGN POLICY**

Mr. ROBERT MURPHY. Mr. Chairman, I may be here under false pretenses because I didn't realize that a formal statement was necessary. I spoke with your staff by telephone, and I thought it would be an informal discussion. I have a few notes and I will be glad to submit whatever questions you may have.

After listening to Arthur's illuminating statement, I doubt very much that I can add to your wisdom on this subject.

As you all know, the Commission on the Organization of the Government for the Conduct of Foreign Policy submitted its report to the President last June. Chapter 7 of that report related to the reorganization of intelligence.

As stated in that report, the maintenance of intelligence capabilities of the highest competence is essential to the national security. Policy must be based on an understanding of many issues—military and economic, political and scientific, foreign and domestic.

That understanding requires the collection and analysis of enormous quantities of information. Much of it is publicly available, but much of the most critical information is not openly available. The primary mission of the United States intelligence community is the responsibility for gathering, evaluating, and reporting such information and assessing its significance; and that mission will remain crucial to the U.S. security for the foreseeable future.

Our Commission stressed a strong intelligence organization in relation to our foreign policy—the need for a strong intelligence organization—and emphasized the need to continue covert policy.

They emphasized the importance of developing surveillance over the intelligence community to give assurance that it is acting consistently with our foreign policy, so that we come down to the question of strengthening the role of the Director of Central Intelligence, strengthening the role of the Assistant Secretary of Defense, and strengthening, and improving the role of the President's Foreign Intelligence Advisory Board to give it a greater degree of surveillance and to tie it in closely to the President.

In each case the incoming President, of course, should renew its mandate to that official, and also to strengthening the work of the 40 Committee by having more meetings—and not just discussions over the telephone—with the need to exchange views at such meetings, and then the continuing follow-up of surveillance after the decision is made to make sure it is carried out and done.

There is the question, of course, of the establishment of the Joint Committee on National Security for Intelligence, or just Joint Committee on Intelligence. I am thinking of Clem Zablocki's suggestions in this area. We have the question of surveillance over the intelligence community, and, of course, the question of representatives from the foreign officer group and the Armed Services Committee, and then the question of the size of the group that would operate in this area—perhaps a minimum of 12 to 15 persons from both Democratic and Republican Parties.

We feel that the system has been really very haphazard up to now. We are dealing here, of course, with classified and unclassified material, with an important thrust to the covert.

We feel that this joint committee should have surveillance over all of it, classified and unclassified, and covert.

On the Senate side I think there was an invitation to some members of the Committee on Foreign Relations once but they never met after that one meeting, and since the 1950's many have proposed a greater degree of surveillance. The difficulty, of course, arises in the selection of members of the committees, a good many of whom, due to many other obligations and burdens, prefer individually not to be involved.

We come down to the core of whatever unit is established, which would relate to the Armed Services and Foreign Relations group, especially with the notion that the Joint Committee would be two from the House, two from the Senate, and two from outside of those organizations.

I have concluded my notes here.

One or two references were made to me before I came down about leaks which inhibit candor and frankness, which Mr. Schlesinger mentioned.

The executive branch must be convinced that Congress can and should be trusted. The best example of the reasonableness of that attitude is the record of the Joint Committee on Atomic Energy in this area, which has existed, as you all know, for a long time without any leakage.

The Commission recommended two options: a joint committee on the NSA, or a joint committee on intelligence for surveillance of the community.

I have in my notes also that it was said frequently in the past that the President makes foreign policy. After 2 years with the Commission on the Organization of the Government for the Conduct of Foreign Policy, it is my understanding, of course, that the President makes foreign policy, but in ever closer association with Members of Congress, in both Senate and House.

The Commission was promoted by Members like Senator Mansfield and Senator Pearson, and Members of the House like Clem Zablocki, Bill Mailliard, and others. There was clearly an identity of purpose to have congressional opinion and direction manifest in the evolution of our foreign policy.

On the Commission we welcome this trend, particularly since the days of Franklin Roosevelt when the tendency was otherwise and the President usually was boss. Usually there were exceptional Members of Congress who took an active interest in foreign policy, but generally there was a good deal of indifference and even of apathy, and a tendency to be happy that the Executive was shouldering the burden, leaving the Member to the pursuit of his many domestic responsibilities.

Today it is evident that an increasing number of Senators and Representatives are determined to play an important and valuable role by timely and informed participation in the early stages of our policy formulation, and this I think is a very healthy development.

If there is occasional impatience in the White House, that is less troublesome than a bland acceptance by congressional representatives of White-House formulas about which the Members need not be informed.

In the work of the Foreign Policy Commission, it was also evident that Congress rarely speaks with one dominant voice on foreign policy issues. There is unhappily often little congressional leadership in foreign policy.

Congress has its own style of action with congressional committees having some foreign policy jurisdiction. A good many of the 535 Members individually seem to regard themselves as competent in the foreign policy field.

Our Commission also pointed out that perhaps too much information in the Government is classified too highly and for too long a period. We recommended that the classification system be covered by law as it now has no statutory base.

We felt also that the House Committee on International Relations should be accorded special oversight functions over reciprocal tariff agreements and international financial organizations. We felt that there should be a review by the Senate of its committee systems, and a better subcommittee organization promoted.

There was a difference of opinion regarding the establishment by Congress of a Joint Committee on National Security. Such a committee, we felt, would perform for Congress—and I might say Senator Mansfield was in total disagreement with this—the kind of policy

review and coordination now performed in the executive branch by the National Security Council, and tie in with the President and the National Security Council. It would take responsibility for congressional oversight of the intelligence community, which must be provided for in any event.

Senator Mansfield objected to the establishment of such a committee on several grounds, including the objection that the committee would cut across the jurisdictions and tasks assigned to existing standing committees, and decrease their powers and authority.

The ultimate decisions in foreign policy in the executive branch are taken, of course, by the President. He has to insure that Congress is fully informed of proposed foreign policy initiatives. He must establish organizational and procedural arrangements which facilitate the task of government, and the Presidential staff, of course, is of prime importance.

Our Commission also invited attention to the holding by one man of the positions of Secretary of State and Assistant to the President for National Security Affairs. We suggested a good many months ago that normally the latter post should be held by an individual with no other official responsibilities, and, of course, we were gratified that the President then acted a little later to separate the two positions, retaining Mr. Kissinger as Secretary of State, and General Scowcroft as Assistant to the President for National Security Affairs.

Since 1947 the basic White House machinery for the resolution of major foreign policy affairs and issues has remained stable in the National Security Council—the making of Presidential decisions. The nature of foreign policy problems has changed since 1947, as has the nature of international power. Economic forces define strength or weakness of nations, and economic issues dominate the agenda of international negotiations. National security embraces economic policy, and on that account if no other, the Secretary of the Treasury should be a member of the National Security Council.

Our recommendations also included the suggestion that the position of Under Secretary of State for Political Affairs be retitled Under Secretary for Political and Security Affairs, and become the focal point for strong State Department participation in defense issues. Also, we recommended that the responsibilities of the Under Secretary for Economic Affairs be broadened, and his title changed to Under Secretary for Economic and Scientific Affairs; his office would direct the activities of four major bureaus under him.

The Department of State, we also felt, must improve its capability to deal with the foreign policy aspects of economic, business, scientific, energy, transportation, food, population and related issues. More ambassadors and more deputy chiefs with economic expertise, we feel, should be appointed, and the defense establishment must be designed and utilized as an instrument of U.S. foreign policy.

We believe, of course, as Mr. Schlesinger pointed out, that firm oversight of the intelligence community is obviously required. I am not quite sure whether I followed Mr. Schlesinger's reference to covert action. We feel covert action must be employed in many cases, but only where such action is clearly essential to vital U.S. purposes. I don't think it requires any statutory authorization.

The importance in our Government of the Congress is illustrated by the impact of its committee system, and of the recent reform this year, which involved a reduction in the power of some chairmen and their selection by election rather than seniority. We are perhaps witnessing, some of us feel, a lack of new leadership. There are deadlocks apparently in committees such as the important Ways and Means Committee, which was expanded from 25 to 37 members. I am personally puzzled by what seems to be—maybe I am wrong about this—a lack of authority in leadership.

In considering the operations of the European community, we wonder, at times, who speaks for the community—its member states or its executives; the Commission and the Council of Ministers in Brussels—and we are never quite sure. But at the same time, Europeans are equally puzzled by the often conflicting positions taken by different agencies within our own executive branch and by the role of Congress in U.S. foreign policy, including commission decisions. So there is an awareness that Congress role is growing in the foreign policy field, and with a special reference to economics.

That is all I had in the way of notes, Mr. Chairman.

Chairman PIKE. Thank you very much, Mr. Murphy.

As we proceed under our own 5-minute rule, I would hope that each of you would feel free to respond or comment on the responses made by the other.

Both this morning and this afternoon, I have heard the statement made that there has been absolutely no breach of security in the Joint Committee on Atomic Energy. At the same time, yesterday I heard Mr. Colby bemoaning the fact that the budget for atomic energy development, or the atomic energy budget, which started as a line item many, many years ago, has now grown to 14 pages of detail.

Do you see any danger whatsoever in publicizing the budget total of our secret intelligence operations?

I will ask you that, Mr. Murphy.

Mr. ROBERT MURPHY. I doubt it. I would imagine that the Soviet representatives in this country are pretty darned well informed about it, just as a guess. I have no evidence.

Chairman PIKE. The Director of Central Intelligence told us he thought that the Soviets had better knowledge than the average American had on this subject.

Mr. ROBERT MURPHY. This would be my opinion. I would take that for granted.

Chairman PIKE. Professor Schlesinger, I am perhaps being a little picky here, but any time somebody says to me, "have a bipartisan membership" on any committee, I don't think it accomplishes an awful lot. It depends on who the members are, rather than what their political party is.

I can look at this committee right here, and think that a liberal Democrat choosing the committee members would have Mr. Jim Johnson of Colorado as his ranking Republican member, and a conservative Republican choosing the committee members would have Mr. Dale Milford as his ranking Democratic member. I just don't think that gets you anywhere.

Would you care to comment on that?

Mr. SCHLESINGER. I would agree that the stipulation of bipartisan membership guarantees nothing. But the present membership of the Foreign Intelligence Advisory Board is, I believe, entirely Republican. It just seemed to me it wouldn't do any harm to diversify that a bit. Obviously any President can always, given the happy amorphousness of our political parties, pick a board of any composition he desires. But a bipartisan condition, combined with the condition of senatorial confirmation, would bring pressure on the President to appoint men who represent a variety of viewpoints. I couldn't think of any other quick way to make sure that all the members of the board wouldn't be of a single viewpoint. This sort of stipulation of course exists in other fields.

Chairman PIKE. Professor Schlesinger, you have made one statement, which is the first definitive statement that I have seen, which tends to confirm a characterization made by Senator Church of the CIA as "a rogue elephant." I have stuck my neck out to some degree, saying that we had seen no evidence that the CIA ever acted without the approval of higher authority. Secretary Kissinger said that to the best of his knowledge—both since he came to Washington in 1969 and to the best of his knowledge before that—the CIA never acted without the approval of higher authority.

I am interested in whether you can document your statement on page 2: "In the case of the assassination projects, the Director of CIA—Allen W. Dulles himself—was not told about the original anti-Castro plot of 1960 until a point after lesser CIA officers had put out a contract in the underworld."

What is your authority for that?

Mr. SCHLESINGER. I hold in my hand an invaluable report. If you will give me a moment I will find it.

Chairman PIKE. Let me suggest that—

Mr. SCHLESINGER. According to page 91 of the report, Bissell and Edwards—that is the people who in 1960 were organizing the Castro project—"acknowledged \* \* \* that Dulles and Cabell were not told about the plot until after the underworld figure had been contacted." In other words, contact was made with these figures without, by this testimony, first telling the Director and the Deputy Director of CIA.

Chairman PIKE. I ask unanimous consent to proceed for 30 additional seconds.

Your statement says "contract in the underworld," and to me that is a word of art which has a very, very different meaning than "contact."

Mr. SCHLESINGER. That may have been a literary flourish, but it does seem to me quite extraordinary that members of the CIA should take this initiative in what I would regard a policy matter of extreme consequence—that is getting in touch—

Chairman PIKE. I agree. Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

First of all, Mr. Murphy, I want to say that I have had occasion to examine your report and I want to commend you on it. It has been very useful. I appreciate the very practical suggestions you have given us here today which summarize the material in the report.

I have also had occasion to visit personally with Mr. Wilcox, who served as your Executive Director.

Mr. ROBERT MURPHY. Thank you very much.

Mr. McCLORY. Professor Schlesinger, the problem I have with your statement, and in earlier statements in earlier illustrious works by you, is that we seem to focus on the sins of Republican administrations, and we either overlook or condone similar offenses in Democratic administrations.

In your statement, you talk about the covert activities which were so useful in the 1950's, and then you talk about the aggressive and offensive conduct that occurred in the 1950's, which would be during the two Eisenhower terms. We haven't even gone back to that period in our investigation, but you make no reference to the kind of aggressiveness which occurred in this precise area in the 1960's. You seemed to exclude that.

Are you aware of any discontinuation of this activity that started in the Truman administration, and that continued on over a period of time? That is why this committee got organized.

Mr. SCHLESINGER. I would not claim that any party is innocent. Just as a matter of historical fact it does seem to me that the really aggressive role of the CIA began when the Secretary of State and the head of the CIA were brothers.

Mr. McCLORY. It continued in the 1960's. It wasn't any less offensive, was it?

Mr. SCHLESINGER. I mentioned the Bay of Pigs.

Mr. McCLORY. It might have been even worse. You bear down on this President, too. He has been in office now for some months; and of course he did establish the Rockefeller Commission which has reported as far as the executive branch is concerned, and who has an active study going on with the Attorney General. I have urged the President, "Don't come out with your reorganization plan and your revamping of the intelligence community until we have an opportunity to conduct our hearings and write our report."

Now, do you think he should jump in, and that he should be condemned the way you have condemned him because he hasn't come out with his reorganization plan while we are holding our hearings?

Mr. SCHLESINGER. I would have thought the President of the United States, who is concerned about these matters in a serious way, would by this time have come up with some kind of program.

Mr. McCLORY. You really have to charge him then with heeding what I thought was good advice to him—to wait until these two select committees of the House and Senate got through with our studies and came up with our recommendations. I would prefer to have those recommendations and then let the legislative initiative begin here, if possible. And if he wants to have some participation in it, why, I think that would be a good thing to do.

Mr. SCHLESINGER. I can see the reasons for your advice. But I am used to Presidents who come up with programs of their own.

Mr. McCLORY. You had some experience with the intelligence community, both in President Kennedy's administration and in the OSS before that, and you know about the existence of the 40 Committee and the 303 Committee. Is it your suggestion that covert operations, which for the most part were approved and which came before these committees, somehow did not come before the committees when they got into serious areas such as assassination plots?

Mr. SCHLESINGER. It is not only my suggestion but my contention, based on the Senate report, that they did not in fact come to these committees.

Mr. McCLORY. Do you think it is believable that less important or less aggressive types of covert operations would come before the committee and be known by higher authority, as the President is always called in these proceedings; and yet assassination plots would somehow just escape their attention and his attention?

Mr. SCHLESINGER. It is hard to believe; but the testimony is very clear that there was never any discussion of assassination projects in the Special Group, and that Mr. Bissell and Mr. Helms did not inform the President or the Special Group or the Director of the CIA about them.

You will find in here, for example, discussions by Bissell and Edwards explaining why they decided not to tell John McCone about the assassination projects.

Mr. McCLORY. Mr. Chairman, I want to ask unanimous consent that the report that Mr. Schlesinger prepared in 1967, I guess it is, might be secured and made a part of our record.

Mr. SCHLESINGER. I would love to have a copy myself.

Chairman PIKE. If we can get one copy and it is not to highly classified—

Mr. SCHLESINGER. I think there is nothing in that report, which was written in 1961—that was 15 years ago—that could not be safely disclosed today. I would love to see a copy.

Chairman PIKE. Without objection, it will be made a part of our record and, as part of his remuneration for coming here, we will see if we can make an extra copy available to Professor Schlesinger.

Chairman PIKE. Mr. Giaimo.

Mr. GIAIMO. Professor Schlesinger, in my opinion, one of the widespread beliefs in Congress is that covert actions are necessary to the national security of the United States, and by covert actions you know what I mean.

Mr. SCHLESINGER. Yes.

Mr. GIAIMO. I mean paramilitary or political interference in countries for political purposes and the like. I am not talking about intelligence gathering or counterespionage and so forth. And covert actions “justify,” therefore, secret agencies and lack of controls, all of which you enumerated, I believe, in your statement and to which Ambassador Murphy referred.

Has it always been so in peacetime? Have we had to have covert actions? My recollection is that covert activities, at least on an institutionalized basis, started in the late 1940's and early 1950's, as an outgrowth of World War II.

Many of my colleagues seem to believe that we have always had this institutionalized type of secret bureaucracy or agency carrying on these activities. Is that so, and are they essential to our national security?

Mr. SCHLESINGER. It is true that, from the beginning, American Presidents have had funds which were first given a statutory basis in the act passed, I believe, in 1807 or 1808—I have the material in the book



"The Imperial Presidency" (Boston, 1973), page 47. These were unvouchered funds and were used for secret service purposes. They were used for intelligence much more than for covert action.

Bob, I took from you and your Commission the definition of covert action, which seemed to me so proper, which is that it—

Mr. ROBERT MURPHY. We called them slush funds at one time.

Mr. SCHLESINGER. Covert action is designed not to get or protect intelligence but to influence events in other countries. We had no formal apparatus for this apart from wartime until the passage of the National Security Act in 1947.

Is covert action necessary? I would first make the distinction—and I agree the line is not clear—between benign and malign covert actions: Helping one's friends on the one side and doing in one's foes on the other.

I think exercises in malign covert actions have generally been ineffective or self-defeating and not worth it. Look at all the trouble our old friend Kermit Roosevelt undertook to put the Shah in Iran. It wasn't worth it.

I do think in the late 1940's what we did to help democratic socialist trade unions, parties, and so on in Western Europe was worth doing. The question is why could it not have been done overtly. The reason it couldn't have been done overtly is, I suppose, the Congress would not have consented at the time of Joe McCarthy, to the notion of helping social democratic unions.

Mr. GIAIMO. Do I gather from what you say that these covert actions have to continue in this way so that Congress does not know what is being done?

Mr. SCHLESINGER. No.

Two things existed in the late 1940's: One was a need for such action and the other was a consensus in the United States in support of doing something. I do not now see the situation, as I said, which requires serious covert action, but I would not prohibit it by statute.

I do think, for example, that, had the atmosphere been different, it might have been helpful to give the Socialist Party in Portugal some support.

On the other hand, if this can be done by the Social Democratic Parties of Europe and by the trade unions, it is better to do it that way and that is the way in fact it has been done.

Mr. ROBERT MURPHY. Is it all right for me to make a remark?

Mr. GIAIMO. Yes, please do.

Mr. ROBERT MURPHY. Just historically, having had a lot to do with North Africa during the last wartime period, we had a very critical situation which involved the expenditure of a lot of money on both sides because at that time there were about 500 German and Italian agents in North Africa who were using a lot of bribe money for the Arabs in Morocco, especially, and also in Algeria and Tunisia.

The French were also spending a great deal of black money and we entered into this under Mr. Roosevelt's influence. He was the one who sent me to North Africa. So we became involved in that kind of a situation where, for example, the Pasha of Marrakech, who was extremely agreeable and who was a heavy recipient of French money, also was involved. You do have that kind of an unusual wartime situation, of course.

Mr. GIAIMO. Of course; that was wartime.

Mr. ROBERT MURPHY. That was wartime. I mention that as an example.

Mr. SCHLESINGER. Mr. Chairman, may I make one quick point in regard to the point that Mr. McClory raised. Mr. Harvey, the head of the Executive Action Bureau, so-called, in the CIA, testified before the Church committee that "there was a fairly detailed discussion between myself and Helms as to whether or not the Director"—John McCone—"should be briefed concerning this"—the assassination plots—"for a variety of reasons which were tossed back and forth. We agreed that it was not necessary or advisable to brief him at that time."

And again on the other point that you raised, "Even if Dulles was informed about the use of underworld figures to assassinate Castro, the Agency officials previously decided to take steps toward arranging for the killing of Castro, including discussing it with organized crime leaders."

This does seem to me to show a certain ineffectiveness in internal control.

Mr. PIKE. Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Professor Schlesinger, a couple of years ago I introduced a piece of legislation to outlaw covert action and we tried to define covert action as including the following: Assassinations, destabilization of governments, paramilitary operations, political and propaganda operations, and assistance to nongovernmental agencies.

Perhaps you have already responded, but it would seem to me from your statement that we should not outlaw covert action but keep it on the books for a while. Could we not, given my definition, enact legislation to outlaw this kind of covert action?

Mr. SCHLESINGER. I would certainly favor outlawing assassination.

Mr. DELLUMS. What about destabilizing governments?

Mr. SCHLESINGER. Well, I don't know how you get a precise statutory definition of destabilization of government. Take the question of the Dominican Republic under Trujillo—this was an absolutely outrageous situation—or any case where you have really ferocious tyranny. I suppose Trujillo was one of the cruelest tyrants the world has ever known. For the United States to show no sympathy for people who were opposed to that regime or to renounce contact with them, to have this legislatively forbidden, would be deplorable. I much prefer to keep a certain flexibility for a situation like that.

Mr. DELLUMS. What about paramilitary operations which would allow intelligence agencies to engage in secret wars without the consent of Congress?

Mr. SCHLESINGER. I think paramilitary operations should be taken out of the CIA. I think the CIA should be forbidden to have any paramilitary capability. I would like to know the views of our young friend here of these matters.

Mr. ROBERT MURPHY. My difficulty with statutory requirements like that is a matter of definition. To fit them into perhaps an unusual situation is sometimes awfully difficult. It seems to me that when you get into that field—I don't know how far you want to go—you run a great risk of unnecessarily handicapping your executive branch. I would have great reservation about it.

Mr. DELLUMS. Let me ask both of you this question: Obviously, if covert activities are to be carried on they have to be cloaked in extraordinary secrecy. The intelligence community in conducting covert actions has in my estimation enormous—and I emphasize enormous—potential, apparent and real, to corrupt institutions. We have the separation of church and state. Yet covert action would allow an intelligence agency to corrupt members of the clergy. We ostensibly have a free educational system, with our colleagues and universities free from political involvement. Yet we have the awesome potential to corrupt professors as well as preachers. We have the awesome ability to corrupt members of the press and we have done that, our intelligence community.

A free press is the cornerstone of a democratic society. And I would use the strong term "corruption" because in my estimation, I think they have also corrupted U.S. public officials. Now, how do you handle the value conflict between, on the one hand, a rationalized need for intelligence against what I consider a constitutional and moral imperative, and that is to maintain the freedom of institutions such as the church, press, colleges, and universities; and certainly we should in no way be able to corrupt public officials either in the legislative or the executive branch in order to allow covert action to go forward.

How do you handle that conflict, where on the one hand, we say we need this information, and on the other hand, there is a direct violation of democratic principles?

Mr. SCHLESINGER. I would think, first, that obviously so far as the United States is concerned, the CIA should be compelled to respect its so-called charter and not do anything like that in the United States.

Outside the United States, we get into a more difficult question because it seems to me that the problem of corruption, so to speak, does not begin with covert action. It begins with intelligence. The line between intelligence and covert action is sometimes hard to draw. Whether through ideological sympathy or bribery, you sign up an official, newspaperman, someone, for intelligence purposes—he may be a member of a government—and then he goes to his CIA contact and says, "Such and such an issue is coming up. What should I do about it?" So an agent who is in place for intelligence purposes may raise questions which move over into covert action.

I do not think that you can avoid the corruption problem and have any kind of intelligence service at all. If you are going to have agents, the issue of corruption in some sense is inescapable. The only thing you can do is to prevent that corruption from corrupting one's own values and any kind of large-scale actions cannot be kept secret in our society, thank God. The great lesson of the Bay of Pigs was, in the hideous jargon of the intelligence community, the noise level was too high.

Well, thank God it was. This means that anything in which the noise levels are going to be too high, anything which Jack Anderson is going to find out about, the intelligence community would be well advised not to undertake. The more you can surround the intelligence community—by, say, an inspector general within the executive branch with some authority; by a joint committee and an intelligence ombudsman attached to it; by congressional inquiries like this one—the more chance you will have of instilling a certain caution and prudence into the intelligence community. But, as your Commission showed, Mr. Murphy,

the proportion of agent intelligence has declined steadily, more and more, with the rise of technological intelligence. Agent intelligence no longer is as important as it was during the Second World War, and it was much less important then than it had been before; so in a sense the problem you mention may be somewhat solving itself. But if you are going to use secret agents, in a sense you are going to corrupt them, though from their viewpoint they may well feel they are fighting a tyrant and will take help from wherever they can get it. This is not an adequate answer to your question.

Mr. DELLUMS. Thank you very much.

Chairman PIKE. I have promised the two members who went to the quorum call that I would keep the committee going until they came back.

Mr. McClory, would you like to ask a series of questions?

Mr. McCLORY. I would like to ask just a couple of more questions if I may, Mr. Chairman.

Mr. Murphy, I think you feel, do you not, that it would be wise for the President to withhold his plan of reorganization of the intelligence community until he and his aides have already received the benefit of the recommendations of our select committees as well as the recommendation he already has—

Mr. ROBERT MURPHY. Oh, for me that would be the normal evolution; or course.

Mr. McCLORY. Professor Schlesinger, I would like to ask you these two questions:

One, it seems to me that the real problem we are dealing with here is the fact that we have had virtually no, or such limited, congressional oversight during the 27 years' experience of the CIA that it has just operated pretty much on its own—without accountability, without oversight.

During the time that you studied this subject—including the time when you investigated the fiasco of the Bay of Pigs—did you make some recommendations to the Congress?

Mr. SCHLESINGER. I did not and I am repentant. My memory of the 1961 report is that it was addressed entirely to the executive branch.

Mr. McCLORY. I don't know what document you were reading from but possibly it was the Senate committee report on assassinations.

Mr. SCHLESINGER. "Alleged Assassination Plots."

Mr. McCLORY. Do I understand that you take the position then—either on reliance or reliance plus the independent information that you have—that the entire initiative was in the lower echelons of the CIA with regard to these highly offensive projects, or proposals, or contingency plans, or whatever they were that were developed in the CIA with regard to assassination?

Mr. SCHLESINGER. That, sir, would seem to me to be the conclusion to be drawn from this because both the people who initiated the plans, as I have said, talked among themselves and did not tell John McCone about it and so on, and the various members of the special group, the 5512 Committee, or the 40 Committee—it went through a variety of titles—have all testified that assassination was never once discussed except at some meeting on August 10, 1962, when it was brought up and presumably dismissed.

But there was no clearance by the committee charged with the obligation to clear covert action of any assassination plans, and both those who initiated the plan and those who were supposed to clear it agreed on that point.

Mr. McCLORY. In addition to the offensive character of an assassination plan, it would be clearly wrong for the head of the Agency—the Director of Central Intelligence—not to assume personal supervision and make personal decisions with respect to such types of drastic actions.

Mr. SCHLESINGER. I would certainly agree with that.

Chairman PIKE. Mr. Field.

Mr. FIELD. Thank you, Mr. Chairman.

Yesterday we had former Attorney General Katzenbach here and he made a few suggestions. One of them was that the intelligence community be required to report periodically to Congress, and that the report include a complete accounting of the operations that had been undertaken in that period of time—their relative success, the programs that were suggested, and so forth.

Would that type of periodic reporting, from your experience—both of you, perhaps beginning with Professor Schlesinger—appear to have any impact on the projects that have been undertaken in recent years that probably were not advisable? Do you think that would have any practical impact?

Mr. SCHLESINGER. This would be a report not of things projected but of things attempted?

Mr. FIELD. It might include that, but more importantly it would be a status report on a periodic basis.

Mr. SCHLESINGER. I don't know.

The capacity of the executive branch to purport to report is so great, and also I do think there are security considerations, particularly on the intelligence side, which might create problems.

Mr. FIELD. You are referring to the appropriate committees, but I think an interesting point is that this committee—through its subpoena of the 40 Committee documents—for the very first time apparently in the history of our Government, got the Government to put together in one place a complete picture of what had been happening over the last few years.

I think it is indicative of how infrequently somebody actually takes a look at the full scope of what is going on.

Mr. SCHLESINGER. May I ask what the criteria by which—I mean intelligence is a complicated business. There are various peaks which involve particular investment of money, risk, and personnel, but at the same time there is a great, massive ongoing process.

Now, what you have were the covert actions submitted to and cleared by the 40 Committee; but what we don't know are the things which the CIA did, like the assassination projects, which never went through that process.

Mr. FIELD. Granted, but at least we got some perception.

Mr. SCHLESINGER. I don't mean to denigrate getting that. I think the important thing is to create the atmosphere where the intelligence community becomes responsible and feels it can't get away with things. The intelligence services existed for a long time in an atmosphere where

they did not feel that. One reason they existed in that atmosphere is because Congress didn't show any interest in what they were doing.

Mr. FIELD. Ambassador Murphy, could you comment on that and also the requirement, by law now, that the Congress be reported to in timely fashion about covert action projects? Do you feel that should be changed or that there should be some attempt to make it clear that the reporting requirement means reporting before an action? Or would it be proper to have that report submitted after an action?

Mr. ROBERT MURPHY. Instinctively I shrink from the requirement feature of it. I don't believe we should put that harness, that bridle, on it. I don't think that is practical or useful or wise.

Now, about the other part of the question. One thing occurs to me in talking about operations of the CIA, and assassination, and all the rest of it. Take any big organization dealing with matters similar to this. You have all sorts of miscellaneous and sundry conversations and ideas.

Now, I don't imagine this committee is suggesting that there should be some system which would illuminate every incidental, even casual, conversation between two members of the staff who might talk over a drink in the evening about the general question of assassinating Mr. X or Mr. Y in some place like Havana. This is not what you are driving at; is it? So I think before you decide how far you want to go in this area, you ought to give that some serious thought because I am sure you don't want to tie the hands of everybody who is involved in this field.

Mr. McCLORY. I would like unanimous consent to answer "No" on that question.

Mr. FIELD. Shifting to another area, we have had debates in here—I know Congressman Johnson is particularly interested—on the real protection of substantive issues and the laws on procedure. And also on that question of accountability you mentioned, Professor Schlesinger—the President's Foreign Intelligence Advisory Board perhaps becoming a more central part of this process. I believe that is one of the administration's thoughts in this area. I wonder if structure is the answer or if procedure is—particularly a procedure we talked of which would be to have the President personally sign off on covert action projects and/or the National Security Council members personally sign off and take responsibility. I wonder whether this would have more impact than perhaps some structural body like PFIAB, which we never had hearings on but, from our analysis, is just another one of those boards with a lot of very distinguished people on it. I am not sure it would change matters.

Mr. SCHLESINGER. I don't think the President's Foreign Intelligence Advisory Board, though it has had very eminent people on it from time to time, has played as effective a role as it should because these are people who come in once a month or so. Still, through the years people like the Harvard historian William L. Langer, Clark Clifford, Joseph P. Kennedy, and so on, have served on the Board. These are people of experience and practical knowledge.

I don't think, if the slate described by William Safire is correct, that President Ford's reconstitution of the Board is very impressive. I do think that the Board must have a full-time chairman and a full-time staff if it is going to be effective.

The notion of the President signing off on covert action has the merit, it seems to me, of meaning that there will practically be no covert action because no President wants to get implicated in it.

On the other hand, the time may come when something ought to be done. In the present atmosphere, the situation of threat to the United States does not seem to me to call for covert action in any major way. Nor is there a situation of consensus in the United States behind covert action. But suppose this were the 1930's and suppose you had Hitler, and Stalin, and so on, and suppose there are possibilities of doing things. I wouldn't want to foreclose all possibilities of doing this.

I think it is important in legislation to legislate not for the moment but for a longer historical span.

Mr. ROBERT MURPHY. If I may just add, Mr. Chairman, I was a member of that PFIA Board for over 10 years, so I think I do know something about its operations and have rather respect for its membership whom I found quite competent.

I was succeeded by Claire Luce, of course, which gives me an added flavor to the situation, but I would like to say a word in favor of this Board which I think should be given more rather than less authority than it has now.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Murphy, looking at your biography here, I was wondering if you might relate to us, if you can, the value of covert activities after the Second World War started and whether or not, had they been in operation prior to the Second World War, there would have been a difference.

Would we have had better intelligence? As I understand history, we depended on the British prior to World War II for intelligence, and the reason we got into this business after the Second World War is because we were caught with our pants down, plainly speaking.

Mr. ROBERT MURPHY. I think that is right, Mr. Murphy.

I know when I first was detailed to go down to North Africa at the beginning of the war, I found a complete absence of any intelligence. We had had military and naval attachés in Paris for many years, and I don't believe more than two of them even made short visits to that area; so the cupboard was bare actually from an intelligence point of view at that time.

I don't know if that is what you have in mind.

Mr. MURPHY. When we draw the line or draw any statutes up here, or propose some legislation, I think when we get down to the nitty-gritty, as Mr. Dellums has indicated earlier in his remarks on that fine line of moral judgment as opposed to the gathering of intelligence, I can see instances where the gathering of intelligence may run into—as Mr. Schlesinger noted—some type of covert actions, and we may prohibit all covert actions.

I am not endorsing covert actions. The ones that I have been privy to since this committee started have been a point of embarrassment, I think, not only to Members of Congress but to this country.

How do we balance this?

Mr. ROBERT MURPHY. If I could make a little historical reference, I happened to be consul in Munich for 4 years, actually at the time

Henry Kissinger was born—right outside of Munich—in 1923. I was there from 1921 to 1925 and lived across the street from a man by the name of Hitler. I got to know the whole crowd around him at the time and made weekly reports to the Department of State about that evolution and about that progress.

I was just thinking—while it is totally irrelevant to what you have done and are working on—with an expenditure at that time of perhaps \$50,000, just some abstract figure, we could have eliminated the whole Hitlerian movement if we had wanted to take the initiative as a country. We later paid many billion of dollars and saw great suffering.

Mr. MURPHY. This is the very point I am getting at. Because of the declaration of war, I think everybody would accept the principle that we could have gone out and assassinated Hitler as soon as the declaration was signed or the Congress approved it. Then he would have been fair game, but prior to that he would not have been.

Mr. ROBERT MURPHY. You see, he and Ludendorff had 20,000 men right outside of Munich who were trained. Each one of them had a steel helmet and rifle, and they took the city and state Government of Bavaria and marched into town. The Wehrmacht ordered them to stop; and when they didn't stop, they killed 19 of them.

I happened to be about 20 feet away from the shooting and saw this. Hitler's own bodyguard was killed next to him and they killed 19 of his people. I think. That sort of situation prevailed then which, of course, would have given us an opportunity, if we were willing to take any initiative at all. But we took no interest in the situation.

Mr. MURPHY. I would like to ask Mr. Schlesinger if it wouldn't have been fair game to have killed Hitler prior to the declaration of war, would you have considered it fair game to assassinate him after war was declared?

Mr. SCHLESINGER. I must say that when I heard the news in June of 1944 that the Germans had made an assassination attempt against Hitler—and since I knew that Allen Dulles, who was the OSS representative in Switzerland, was in contact with German resistance people—I regretted the fact that this had failed.

As I recall, British Intelligence made an effort to kill Hitler in March 1939.

Mr. ROBERT MURPHY. That is correct.

Mr. SCHLESINGER. Before the war. I cannot honestly now say that I am sorry that the British Intelligence failed. If one may become theological, you have to draw on the theological concept of tyrannicide. I do think there are certain circumstances where tyrannicide is morally justified. But there are damn few of them. Therefore, I think as a normal weapon in peacetime or in wartime, assassination is something that should not be considered.

But I still think there is such a thing as tyrannicide.

Mr. MURPHY. Could we have blueprints?

For instance, if we were going to go to war with Russia, we have a pretty good book on the fellows that we would like to get rid of right away. Would you consider it—

Mr. SCHLESINGER. No.

Mr. MURPHY [continuing]. Fair to have blueprints doing away with them?



Mr. SCHLESINGER. I think Hitlers come along once. In the first place, quite apart from the morality of it, there is the practicality of it.

One of the things about the whole Castro thing is it was ridiculous. If Castro had been killed, Che Guevara or Raul Castro would have taken over. The only possible argument for Castro is in the context of an invasion, and the whole thing came up as part of the Bay of Pigs effort—

Chairman PIKE. The time of the gentleman has expired.

Mr. Aspin?

Mr. ASPIN. Thank you, Mr. Chairman.

Mr. Schlesinger, let me just follow up a little bit on the line of discussion that you were pursuing.

I take it that you believe the best way to control covert actions is to bolster up the President's Foreign Intelligence Advisory Board.

Mr. SCHLESINGER. Cut the budget.

Mr. ASPIN. Cut the budget; but I am talking about controlling the actions themselves. Beef up the President's Foreign Intelligence Advisory Board, make it its responsibility to approve covert actions, and institute this kind of Inspector General and ombudsman system to make sure they don't start something that hasn't been approved by the President's Foreign Intelligence Advisory Board.

I think basically that is not a bad idea; and I think we could do it in various ways besides the President's Foreign Intelligence Advisory Board, and I think it is very good. Let me just push the analysis a little bit further to where we can get into trouble.

One of the things that we have learned is that covert actions can be approved at various levels. Covert actions of a very low nature can be approved by the chief of station in the country; those of a slightly higher nature can be approved by the Director of Plans back in Washington; those of a little higher level than that can be approved by the Director of Central Intelligence; and that the 40 Committee approves only those actions which contain substantial risk of American involvement or, second, a lot of money. Those are very big terms and the Senate committee report on Chilean operations says in fact, of all covert operations, only one-fourth ever get approved by the 40 Committee.

My first question is how would you delineate those covert actions which have to be approved by the President's Foreign Intelligence Advisory Board—or would all of them have to be, in which case that Board would have to be made up of full-time people? How do you delineate which ones can be done further on down and which ones have to be sent up to the President's Foreign Intelligence Advisory Board?

The second question I have I think gets into the colloquy you were having with the chairman earlier about what is approved and what isn't approved. I think what we found is that things are approved in some form or another. A piece of paper goes forward that says we are going to do something in country X. But what the 40 Committee thinks they are approving turns out to be something very different than what actually takes place after people get into the project and start formulating the actual implementation of it. Whether it is deliberate or accidental or what, I guess doesn't really matter; but they

don't really know what they are approving because, in fact, what happens is something else.

That would be a very gray area. What would your ombudsman say if in fact the President's Foreign Intelligence Advisory Board, under your scheme, approved something but then what was done wasn't exactly that?

So those two questions: the first, what level it has to go to in the President's Foreign Intelligence Advisory Board; and the second, how do you make sure that what is approved is in fact what takes place?

Mr. SCHLESINGER. They are two very penetrating questions.

I think you were out of the room when we discussed the question of the criteria——

Mr. ASPIN. Yes.

Mr. SCHLESINGER [continuing]. Of what goes to the clearance group, and I hope that your examination of the stuff you have been able to get from the State Department and the special group, 40 Committee, throws some light on that. I mean the general phrase is high risk, high cost. What does that mean? And I think that is why it seems to me that having an Inspector General and an ombudsman provide some means of making sure that the Agency won't try to sneak operations past the clearance system.

I thought about it and I have been unable to construct any criteria except as you spell out high cost as meaning over a certain amount or high risk as involving dangers of exposure and failure, and so on. I think that that is inherent in the situation.

The second problem is even more troubling. One thing we observed about the Bay of Pigs was that the agents, the CIA operatives who were in the field with the exiles, were giving them quite different instructions and impressions from what had been decided in Washington.

Now, there may be something peculiar about the sort of people attracted to covert action as a career. Who becomes a secret agent? The process is self-selecting. Psychologically, people who get into that are by nature daring, reckless, activist, melodramatic. They live in this kind of hallucinatory world. Though President Kennedy made very clear to Dulles and Bissell at the time that in no circumstances, for example, would there be any American military support if the invasion failed, nonetheless the CIA operatives who were dealing with the battalion that went in gave them to understand that in case of trouble American support would follow.

That again is inherent in the nature of the kind of people you are going to get. You are not going to get levelheaded, prudent people on the whole on the operational side. You get them on the intelligence side, particularly the intelligence analysis side; and I think this is just another argument for minimizing covert action.

I do think at the time of the Marshall plan, and so on, it played a not unhelpful role. But I think the case against almost all forms of covert action is overwhelming in the present state of the world.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman?

Mr. LEHMAN. I have just one question. It is a question that has been asked of me frequently and that is, is there a CIA within the CIA—

a kind of covert CIA within the CIA? Have you ever been asked that question, and if so, what kind of answer do you give?

Mr. ROBERT MURPHY. Are you talking to me?

Mr. LEHMAN. Either Mr. Murphy or Mr. Schlesinger.

Mr. SCHLESINGER. I yield to the Ambassador.

Mr. ROBERT MURPHY. In my experience I am not aware of any.

Mr. LEHMAN. Have you been asked that question?

Mr. ROBERT MURPHY. Yes, of course. There are many versions of the question, actually; but I have never personally been able to detect that kind of setup and I have known the Directors through the years.

Mr. LEHMAN. That is the answer I give.

Mr. ROBERT MURPHY. It is sort of a normal inference I might draw.

Mr. SCHLESINGER. On the other hand, I would say the CIA is highly compartmented. Again the Bay of Pigs. The Bay of Pigs was held very closely by Allen Dulles and Richard Bissell. It was not ever submitted to the Intelligence Brance of the CIA. The Director then was Bob Amory, who himself had taken part in two amphibious landings during World War II. They were never asked about it, nor indeed were the rest—what was then called the DDP, Directorate of Plans, now called the Directorate of Operations. They were never involved in it. It was a very highly compartmented operation.

Mr. ROBERT MURPHY. It is different from saying there was a mechanism set up. Of course, there are many individual points of view and conversations of a different nature but that there was a mechanical contrivance there, centralization, is not what you mean.

Mr. SCHLESINGER. No.

Mr. LEHMAN. But you agree the answer to that question is no. There is not a CIA within the CIA.

Mr. SCHLESINGER. As far as I know.

Mr. LEHMAN. I yield back the balance of my time.

Chairman PIKE. I want to thank both of you very much for having been here and having given us the benefit of your combined wisdom, earned the hard way for both of you I might say.

The committee will stand in recess until 10 a.m. tomorrow morning when we will be back where we were this morning, in room 2212.

[Whereupon, at 3:45 p.m. the committee recessed to reconvene at 10 a.m. Friday, December 12, 1975].



# THE FUTURE OF INTELLIGENCE

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FRIDAY, DECEMBER 12, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, the Honorable Otis G. Pike (chairman) presiding.

Present: Representatives Pike, Dellums, Murphy, Aspin, Milford, Lehman, McClory, Treen, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Jacqueline Hess, Alexander Beam, Vance Hyndman, and Gregory G. Rushford, investigators.

Chairman PIKE. The committee will come to order.

It is quite possible that this will be the last hearing of the House Select Committee on Intelligence. It is also possible that it will not be the last hearing of the House Select Committee on Intelligence. One of the issues which remains somewhat open ended is the question of the withholding of intelligence on possible violations of the SALT I agreement. We have had Admiral Zumwalt testify on this issue, and he made a very strong statement.

We have had from those in the administration who have been most eager to deny us information, statements that we ought to have other witnesses providing us information. I am perfectly willing to have a hearing on this issue with other witnesses from the administration, but I want the committee members to know that I have requested the declassification of certain documents which are in our possession. The request was made, I think, a week ago today. I have still had no response to that request.

We have requested access to other documents on this issue where we have not received the documents.

I want to discuss with you, Mr. Colby, before we start, this particular issue. I know that you would disagree rather strongly with some of the allegations made by Admiral Zumwalt. I know that you are aware of the request we have made for the declassification of documents because the request was made by me to you. And I want to start in a spirit of what I hope is comity by saying this committee has neither the jurisdiction nor the expertise to address itself to whether or not there have been violations of the SALT agreement.

This committee does, on the other hand, have specific jurisdiction over what happens to intelligence and whether or not intelligence has been withheld, not only from Congress but from certain members of

the executive branch who, in my judgment, should have had access to intelligence.

What are you going to be able to do about getting these documents declassified? And what are we going to be able to do about getting other documents on this issue?

### STATEMENT OF WILLIAM COLBY, DIRECTOR OF CENTRAL INTELLIGENCE

Mr. COLBY. Mr. Chairman, I believe with respect to the specific documents for which you requested declassification, you will have an answer by the close of business tonight or by tomorrow morning at least. You will certainly have an answer. I am discussing the release with the appropriate officials.

Chairman PIKE. In fairness to this committee, I just did not want the record to indicate that we had refused other witnesses an opportunity to appear. We would be delighted to have other witnesses appear, but in the process of asking questions of the other witnesses, we want to be able to ask questions based on the documents which we have.

Mr. COLBY. Right, understood, Mr. Chairman.

With respect to the other aspect of the question, Mr. Chairman, I would respectfully suggest that you would be able to get a more full description of the situation and what was done with these various reports if you could hold such a hearing—at least part of it—in executive session because some of these matters do cover very specific—

Chairman PIKE. Mr. Colby, that I do not want to do. As I have said, we are not interested in the substance of the issue. We can leave out what particular possible violation we are talking about. What we want to learn is whether intelligence as to possible violation *x* was held out of the normal chain of dissemination or was kept away from committees of Congress—that sort of thing. There is no reason why we cannot discuss in open session what happened to intelligence, without discussing what the intelligence was about.

Mr. COLBY. I agree with you, Mr. Chairman. That is why I said “at least part in executive session”; because a discussion of the details of any one of these things would inevitably begin to reveal our sources. It is very difficult to discuss what happened in any one incident without discussing what the incident was. We have techniques for that of putting—

Chairman PIKE. Well, you require me to go a little further, then, than perhaps I wanted to go in open session.

The Secretary of State, in his press conference the other day, said that these particular issues were taken up with the Soviets as they arose. Now, I have a lot of difficulty accepting the proposition that when issues have already been discussed with the Soviets, they cannot be discussed with the Americans—with a committee of Congress—for fear of revealing our sources.

Mr. COLBY. Mr. Chairman, I believe part of the reason for handling the matter in that fashion was that there is an agreement with the Soviets that the discussions between us about these matters will remain confidential.

Chairman PIKE. That may well be, but that has nothing to do with sources; does it?

Mr. COLBY. It does not have to do with sources in that particular situation, but a detailed discussion of the intelligence that was picked up starts with certain indications which only come from certain sources. It then generalizes into a statement of a situation. The situation may not reveal the source, but the detailed discussion of the raw intelligence and where it started can indeed reveal the source.

Chairman PIKE. We are not asking for a detailed discussion of the raw intelligence and where it started. We are asking for a discussion in open session of what happened to intelligence, and I am not going to be put off from holding an open session on this, and you did not suggest that.

Mr. COLBY. I do not ask that, no, I do not ask that.

Chairman PIKE. You did not suggest that it would all have to be in executive session. And I will say that you have never had any difficulty in the past in saying that the answer to a question would require that we go into executive session, and I believe——

Mr. COLBY. And you have respected that.

Chairman PIKE [continuing]. Your capability will continue in the future. So on that basis we will leave it. But if we are going to have a hearing on this issue, it is going to be an open hearing with declassified documents in our possession.

Mr. COLBY. You will get an answer on that tomorrow, by tomorrow.

Chairman PIKE. The executive branch seems to have an uncanny knack for advising this committee of things on Saturdays.

The first witnesses today will be Mr. Colby, and we will be talking, essentially, about where we go from here on intelligence.

Please proceed.

Mr. COLBY. Thank you, Mr. Chairman. I am very happy to be here to discuss the future of intelligence. I think this depends upon two things. Mr. Chairman: first, the future of the world as it will be; second, the future of our country as we want it to be.

I think the present period has certain similarities to the 1920's. Mr. Chairman. Then, there was a revulsion against a war, a determination that the world had become safe for democracy, and a desire to return to normalcy. This was translated into extensive programs of naval disarmament, of the reduction of the American Armed Forces—we even took a battleship out and sank it to show our conviction about naval disarmament. And one of our Secretaries of State made the somewhat famous statement, as he closed up a code-breaking unit, that gentlemen do not read each other's mail. He believed he lived in a world of gentlemen.

As we look to the future, Mr. Chairman, I do not see that it will become a world of total détente and total gentlemen. There are problems ahead in the world as it will be in the future, that I believe will require intelligence. We know there is a population problem growing in the world; we know there is continued underdevelopment and that the gap between rich and poor countries is expanding rather than reducing.

We know of the dangers of nuclear proliferation, that small countries may be able to acquire the enormous potential of nuclear energy for warlike purposes.

We realize that the world economy is interdependent and that we have become dependent upon various small nations who have control

over raw resources and can have an enormous impact on the economy and welfare of our people and country.

We know that there is extremism in the solutions being advocated by various groups around the world. We have an example of the terrorism that they can apply to try to put forward their somewhat extreme views in the present situation in Holland, where a small group advocating independence of the Republic of Moluccas—a totally unfeasible situation at this time—holds a number of Dutch citizens under peril of death.

We have new areas of potential competition between nations in the space and under the oceans, where we will compete for the natural resources. There is an enormous acceleration of events as a result of advances in transportation and communication. We see weaknesses in the international orders as we have structured the United Nations and the other international organizations.

We realize that democracy is a minority in the world today, that only some 30 of the 140 countries in the United Nations can meet the standards of that ideal of ours.

We know that there still are and will be authoritarian great powers in the world who can and do have ideas for hegemony, ideas for expanding their power beyond their borders and ideas for expanding their influence into other parts of the world.

So the world ahead, Mr. Chairman, is not apt to be a totally peaceful and quiet world. It has all the elements of difficulty for our country and for our people as we look ahead.

We believe we need intelligence to understand these situations. We need intelligence in a variety of fields. We need it in the political field; we need it in the military field; we need it in the scientific field; we need it in the economic field; biographic field; and even in cultural affairs because the world has become one world in that sense also. We must be able to anticipate future problems. I think this is the key, Mr. Chairman, to solving these future problems. Some problems can be solved if we can anticipate them because we have the time to develop the necessary weapons or policies to defend ourselves. Some problems can be solved because we have the time to develop the necessary weapons or policies to deter the problem. Some problems can be solved because we have the time and warning to be able to negotiate the problem down to a small problem instead of having it become a major confrontation and a major crisis.

How do we do this job of anticipating these future problems? I think intelligence does this, Mr. Chairman, by its programs, to raise the consciousness of our decisionmakers about these problems as we look ahead, so that we can become aware of these problems and the subtleties and the difficulties involved in them.

We are going to have to improve our ability to anticipate these problems; we are going to have to improve our ability to raise the consciousness of our decisionmakers about these problems. We are going to have to bring—we are going to have to have more speed in coming to our assessments so that they can truly be in advance of the events, instead of at the time of the events.

The question has been raised, Mr. Chairman, as to whether the United States would be aware of an attack against us, and at least one member



of this committee has stated that he believes it would not. I find this surprising. I deny it flatly. I find it particularly surprising as a charge; because with respect to the only major country that could threaten us today, intelligence on that country has not been a matter of the investigations of this committee.

I think that we have perhaps frightened our people with this statement—by an apparently authoritative body—about the possibility of surprise attack on our country. I can guarantee you, Mr. Chairman, that we are aware of the capabilities and we are aware of the political dynamics of the major countries in the world which could threaten a real attack against the United States, and I can tell you right here and now that there is not going to be one in the near future.

We have pointed to several of the occasions in the past in which our predictions have not been entirely accurate. The principal one was, of course, the Arab-Israeli War of 1973. I think a careful examination of that history, however, reveals that some months ahead we did indeed raise the consciousness of the danger of war in the Middle East. We predicted that unless progress were made on the political front, the danger of war would increase very substantially in the fall of 1973.

We also accurately predicted the outcome of a war between the Arabs and Israelis. We indicated how we thought it would come about and how it would come out. Our prediction of how it would come out proved to be accurate in the event. We did not predict the precise day on which it occurred. In fact, we were wrong in that particular prediction. But I think we certainly did do the intelligence job of raising the consciousness of danger of attack, of danger of outbreak of war at that time, even though we did not go the last mile and predict the precise date and moment of the attack.

I think if you look, Mr. Chairman, at the record of the intelligence community on the latest major event, you will find that the intelligence community performed exceedingly well with respect to the fall of Vietnam in this past year.

Last winter, about this time, we made estimates about what would happen in Vietnam over the next 6 months. We predicted that there would be attacks, but that there would not be a major attack at that time; that the major attack would probably take place in 1976. But we said that if there were an opportunity, the North Vietnamese would certainly seize the advantage of the opportunity and go on to a major attack with an effort to take over the country.

When the opportunity arose, through the initial decisions of the South Vietnamese Government to withdraw to smaller lines and move its troops out, there was a popular explosion and the army was swept from the roads. We predicted that the North Vietnamese would indeed exploit that opportunity. And we followed their divisions as they moved down to do so.

We predicted that the fall of Saigon was a matter of weeks or days, as the final days of the event took place.

I think we have other areas in which we have increased the consciousness of our Government and our people about the problems that lie ahead. Our Navy and our people will not be surprised by the arrival of an aircraft carrier in the Soviet Mediterranean Fleet next year, nor

in the travel of such an aircraft carrier and its sister ship further downstream, and its other sister ship is currently under construction—nor when those ships begin to circulate around the world.

We have identified that as a future problem that we Americans are going to have to face. It is not going to burst upon our consciousness as the Sputnik did some years ago.

We have followed the development of the grain market in various parts of the world. We accurately predicted this year the low yield of the Soviet grain crop. We did not predict that it would be as low as it was, before the lack of good rain brought that about, because we have not improved our prediction of weather to the degree that we have improved our prediction of other events.

We have followed very carefully and noted the movement of petrodollars around the world, where they have gone to and what the political impact of this is going to be downstream.

We have developed systems alerting our Government to problems that are arising in the world so that our Government can take stands and take steps to avoid them.

I think you are aware, Mr. Chairman, of the fact that we are in on the discussions within some closed societies of what their plans are; we have been reading some of the private documents of some authoritarian political parties in closed societies so that we know what their policies are and what they are thinking about.

We have a system of communicating these facts, these details of intelligence, to our national leadership in the most rapid fashion believable. We have warning systems that can indeed warn us of any development which seems to threaten our country in a technical way. We do not "cry wolf" at every event that might threaten our country because we are aware of the old Aesopian fable that he who cries wolf too often becomes ignored after a time.

We are running a CIA, not a CYA, "covering yourself afterward," so that we [laughter] so that we have the problem of identifying real threats to our country and real opportunities for our country. I think this is the world we face, and I think we have the intelligence capability to warn our country, so that we can anticipate the problems ahead, instead of meeting them head on.

The other aspect of the question of the future of intelligence, Mr. Chairman, is what kind of intelligence do we want? We want intelligence, I believe, independent of policies and programs; we do not want intelligence that supports a request for a new weapon system just because somebody wants the weapon system; we do not want intelligence that supports a new policy just because somebody wants a new policy.

We want to have independent assessments of what is going on in the world, and then let the selection of policies follow that independent assessment. We want guidelines for our intelligence, for its proper and improper activities. We want to end the old euphenism about telling intelligence to go "do some unpleasant things in the national interest but not let the Nation have to worry about what it is doing."

Let us define very carefully what we want intelligence to do; give us good guidelines and intelligence will follow these.

For example, even in my confirmation hearings some years ago, the suggestion came up that we add the word "foreign" to the word "in-

telligence" whenever it appears with respect to the CIA because we Americans want the CIA to be a truly foreign intelligence agency, not one engaged in activities here in the United States.

We want to avoid the hypocrisy of pretending that we do not conduct intelligence, while asking our professionals to do so. We Americans insist that we stand up and recognize the fact that these are going to go on. And for that, we are willing to pay a price in terms of admission that we do conduct intelligence.

We are going to provide our intelligence service the necessary cover for its activities abroad, in the Government, and in private industry and private life, because intelligence is a part of protecting the society of which they are a part.

We will be sure that intelligence adheres to our Constitution and to our laws in the work that it does.

Next, Mr. Chairman, we need supervision of intelligence. We need supervision externally; we need supervision internally. You have looked at the structures for supervision within the community and outside it. You have looked at it in the executive and in the Congress, and I believe you will find that the better the external supervision of intelligence is, the better the internal supervision of intelligence will be.

I do not say that we need detailed congressional approval of every action of intelligence, because I suspect that Congress would not want to be in on the detailed specific approval of every action. But I do believe that Congress does want to supervise what intelligence does so that it can insure that intelligence adheres to its proper role and does not go off into other areas.

I think that intelligence is going to be asked to provide a service to American decisionmaking and in American decisionmaking we have divided up the job; the executive makes parts of the decisions, yes; the Congress makes parts of the decision; the public makes parts of the decision.

So we are working on systems by which as much of our intelligence as possible can be made available not only to the executive, but also to the Congress and to the public. We have declassified a large amount of intelligence. We have provided classified briefings to many committees of the Congress so that we can speak fully and freely about the problems of the world around us.

We are, I believe, going to extend and continue this process in the service of intelligence to American decisionmaking—under the constitutional structure we have.

We are going to want intelligence to be as cheap as possible, because we do not want to waste money on intelligence. We do not want to say that our intelligence is not worth it. We are going to have to determine what expenditures for intelligence are necessary, by a detailed annual review.

We are going to find that this world that we face, and the technology and costs of people around the world, make intelligence expensive. Is it worth it? How good is it? And what does it save?

Does it save conflict; does it save waste in other areas; does it avoid the necessity to build an anti-ballistic-missile system at \$50 or \$100 billion a year because it leads our Government to negotiate a mutual agreement to abandon that particular technique?

I think that the worth of intelligence can be determined through the supervision of the Congress and through a discussion with the Executive on an annual basis. As you know, Mr. Chairman, I do not believe that we can discuss in public the specifics of our expenditures because I am afraid that that begins a process of erosion of the numbers used and it begins to reveal the details of the intelligence activity.

The House of Representatives, I am delighted to say, voted 260 to 140 to keep the budget of the CIA secret because they agree that this would start an inevitable trail of opening up the subject of intelligence into areas where we would begin to hurt ourselves more than we helped ourselves.

Organizational changes for intelligence have been discussed, Mr. Chairman. President Kennedy is reputed to have once said that he wanted to scatter the CIA to the winds and there are those who apparently think the same these days.

There is one suggestion that the CIA be reduced to 10 percent of its present effort and that its clandestine effort be placed in the Department of State. I do not think that we can reduce that effort to 10 percent and still have it do the job that it is doing today. I think that the idea of having a small, hard-hitting, lean service is certainly attractive, but I think we are going to have to determine that by a careful look at the budgets required and the manpower required, against the world challenges and against the costs that are inevitable. And simple solutions such as that will not prove to be valid in the long run.

On the other end of the spectrum, Mr. Chairman, there are proposals to set up an intelligence czar—to put one figure with enormous strength and power over all of intelligence—over Defense intelligence, over CIA, over State intelligence, over all intelligence.

Again, I think this is a questionable suggestion because I think that this would indeed give him perhaps more power than we in America would expect to be a good thing.

I think one of the features of intelligence we want, Mr. Chairman, is that some of our intelligence truly be secret. We want to protect our Nation's intelligence sources the way our journalists protect their sources; we have to have some secrets that we need to keep. We have to abandon the old tradition of total secrecy, but I think we do have to agree that there are secrets in America, in our ballot boxes and in other areas of our life that we do respect, and that intelligence has a legitimate area in which it needs secrets and in which its secrets need to be protected for the benefit, not of intelligence, but of our Nation.

I think we are going to have to improve, Mr. Chairman, our ability to discipline those in the intelligence profession who assume its obligations, but then go out and violate them. I think our laws today are very weak in this regard. We do not need an official secrets act: we do not need to conflict with the first amendment of the Constitution. But we do need the kind of disciplinary control over intelligence secrets that we have over the secrecy of the income tax return, over the secrecy of crop statistics before they are released, over the secrecy of other aspects of our national life that need to be protected and which have criminal sanctions against the employees who reveal them wrongfully.

I think, Mr. Chairman, that the future of intelligence will still have to have effective covert action. We may have to seek a new name for that, because of the difficulty of keeping these matters secret these days. We may have to call it secret action or we may have to call it merely unadmitted action, and join this world of independent nations which refuse to acknowledge some of the things they do, even though it may be known generally that those are done.

There have been occasions in the past year in which matters have come to prominent public attention, but the administration spokesmen have refused to confirm the association of the U.S. Government with those situations. These have been in both the intelligence field and in the covert action or influence field.

I think we are going to have to accept the sophistication of nations which admit that these things can take place, but don't admit that they do it in direct quotations.

With regard to this matter of the exertion of secret influence: I think we are going to accept it as Americans in the years ahead, because I think we are going to see that there is a value to that kind of action that cannot be achieved by either a diplomatic protest or by sending the Marines.

I think we are going to have to accept the value of some quiet influence on a foreign situation so that we can defuse a problem before it arises; so that we can support democratic forces who are struggling to maintain themselves against authoritarian suppression, when this is in the interest of our country. We are going to decide which ones are good and which ones are bad by a process of consultation within the Government and with the appropriate committees of the Congress.

The present act requires that six committees be informed of any such activity. I would hope that we are going to reduce the number of committees, and that our representatives in the Congress can be representatives in the real sense as they review the propriety and advisability of any of these actions, and not insist that they cannot take the responsibility of representing the other Members of the Congress and the public at large when faced with a description of one of these activities, and merely pass them on to public exposure.

I think there are vehicles by which opinions can be stated and by which opposition can be expressed, and that these will be given full consideration by the Executive in the continuation of an operation or even discussion of whether to go ahead with a particular operation.

Last, Mr. Chairman, I believe that intelligence in the future must be professional. I think that our Government has, over these past 30 years, developed a professional intelligence service. We never had one before. We used to organize it for a war and disband it after the war. We even disbanded our service in 1945, at the time when we dissolved OSS. But we faced a new war, the cold war, so we organized intelligence to meet that new war. We may be at the end of the cold war; I am not sure.

We, however, still have these problems of the future ahead in the world and we are going to need a professional intelligence service to help our country in the process of meeting them. That professional service is going to have to have its expert analysts, its expert technicians and its expert clandestine operators. I think the professional service can indeed provide to the United States intelligence in the

future, and can abide by the rules that we Americans set for that service.

Then, Mr. Chairman, I hope that the CIA can stop being a scapegoat for sensation, created by its own critiques which were done so that it can improve its procedures. I hope by that time, when we get to 1990, we will not look back on 1975 and marvel at the naivete of the Americans of 1975 as we now marvel at the naivete of the Americans of the 1920's. I believe we will have a responsible intelligence service and I believe that all of us Americans will be responsible about it.

Thank you, Mr. Chairman.

Chairman PIKE. Thank you, Mr. Colby. No one wants more than I do to proceed immediately with questioning. I will only say that in fairness to our other witnesses and because we have four witnesses scheduled today, and a quorum call going on right now, we will continue with the presentation.

What is your time schedule, Mr. Colby?

Mr. COLBY. I am at your disposal, Mr. Chairman.

Chairman PIKE. Then what we are going to do is hear the statements from all of our witnesses. We will then proceed under the 5-minute rule for as long as the members wish to do so, both this morning and, if necessary, this afternoon.

Our next witness will be Dr. Leo Cherne—

Mr. McCLORY. Will you yield for an inquiry?

Chairman PIKE. Yes.

Mr. McCLORY. Is your statement written? You gave it extemporaneously, but I just wonder whether it is written. If it is, I thought the staff would reproduce it for us.

Mr. COLBY. I am sorry, but I have been testifying so much recently that I did not have a chance to write this. I wrote some notes and that is about all.

Chairman PIKE. Mr. Cherne has an amazing biography in that he is an author, a sculptor, a member of the President's Foreign Intelligence Advisory Board, and has been chairman of the board of directors of the executive committee for Freedom House.

We are just delighted to have you here today, Mr. Cherne, and please proceed with your statement. However, before you begin, I will say this: I do not know how rapidly you read. If I were reading your statement, it would take me 40 minutes to do so; and I can only suggest that if at any time you feel there are portions which can be put in the record and not read at this point, we do have your complete statement before us.

#### **STATEMENT OF LEO CHERNE, MEMBER, PRESIDENT'S FOREIGN ADVISORY BOARD; EXECUTIVE DIRECTOR, RESEARCH INSTITUTE OF AMERICA**

Mr. CHERNE. Thank you.

First of all, let me express my appreciation in turn for the invitation to address this select committee. When I received the request earlier this week, I was told that the representatives of both parties concurred in expressing the hope I might present some overview, some sense of the future needs for intelligence.

I will unavoidably repeat some things you know, but I do hope some of my observations will be helpful to you in your most important undertaking.

First, let me salute this committee for the two main thrusts of its investigation. Under your direction, Mr. Chairman, there has been an effort to determine whether our intelligence has been adequate for the needs and dangers we have faced and whether we have proceeded to obtain the intelligence we require, with sufficient regard for the rights of the individual and the obligations of law under the Constitution.

Now, before I expand on those, with your indulgence, I think you are entitled to something of my background against which to measure some of my observations.

I have been the executive director of the Research Institute of America for nearly 40 years. That activity has sharpened whatever capabilities I have as an economist and political scientist. That time has been spent in good part in the study of governmental institutions gathered in this city. I confess that at a time when it is fashionable to derogate government, I have always had and continue to have a passionate respect for this most difficult, overcriticized, underpaid, and very undervalued activity. I include this body as well as the executive branch in that expression.

Chairman PIKE. Even if it hurts.

Mr. CIERNE. It does not hurt at all, Mr. Chairman.

Twenty-four years ago the distinguished theologian, Dr. Reinhold Niebuhr, urged me to succeed him as chairman of the International Rescue Committee. I have since then occupied that post. That committee was formed days after Hitler came to power for the purpose of assisting the democratic leaders and scholars of Germany who might have to flee that country. Since then, the IRC has assisted hundreds of thousands of those who have fled Fascist, Communist, and nondescript forms of totalitarian jeopardy. Those helped have fled the Soviet Union and the military government of Greece, Castro's Cuba, and Duvalier's Haiti.

We assist those who have been refugees from the Communist countries of central Europe and those who safely reach Hong Kong. We have resettled more than 100,000 Cubans in this country, and are helping 18,000 of the Vietnamese who are now in our midst.

For more than 20 years I have been chairman of the executive committee of Freedom House, an organization which was founded in 1940 by William Allen White, David Dubinsky, Roy Wilkins, Wendell Willkie, and others to advance the struggle for freedom. The present chairman is former Senator Margaret Chase Smith.

Now, just a couple of final personal notes which I do think are relevant to this committee's purposes. I have had the privilege, in one context or another, to serve each President since 1938. Each of these occasions has involved an opposition to totalitarianism. On one occasion, I was told that I had earned the displeasure of the Director of the FBI. I had made myself a determined nuisance to Senator Joseph McCarthy beginning 1 month after he entered the Senate in 1947, and continued that opposition to the Senator until 1954 when he was censured.

My attention was drawn to the Senator because of my own deep concern with the Communist Party. I found it alarming that the Communist Party, through its instruments in Wisconsin, openly and actively supported McCarthy, if only for the purpose of unseating Senator Robert La Follette, who at that moment had launched an investigation into the extent of Communist domination of U.S. Labor unions.

At a later time, I thought that the frequent social contact between McCarthy and FBI Director Hoover inappropriate. My saying so was not appreciated. In time, my criticisms of Senator McCarthy and of his disregard for personal rights led to a threat being conveyed to me that libel proceedings would be instituted if I did not desist. I said that such an action would serve a purpose I long thought useful—having the Senator in court under oath. The threat subsided.

Gentlemen, I appreciate your indulgence in these personal details. I hope I am sensitive to the committee's concern for the protection of the right of privacy of American citizens, the conduct of intelligence within the law; and, perhaps most important, for the urgency of assuring the American people that intelligence and personnel of the intelligence community must never again be requested or permitted to perform some service useful to anyone's domestic political purposes.

Neither foreign intelligence nor domestic intelligence, neither the CIA nor the FBI, must ever again be requested to perform or acquiesce in an activity which, whatever guise is asserted, actually seeks to serve an individual's ambition or a political candidate's or party's purposes.

It is with a kind of relief that I now know, as a result of these investigations, that the abuse of and by the intelligence community has occurred during the administrations of both parties. This misbehavior has occurred under Presidents who were held in awe, or admired for their grace, or respected for their candor, or revered for the gratitude we have for those who got us out of danger, or were seen as simply sometimes ruthless, beleaguered, or ambitious. Gentlemen, this has not been a problem more characteristic of one party than the other.

These abuses are perhaps inherent in the fact of power. And all too much power, for too long a time, was enjoyed—with no restraint by anyone—by a much praised man who held his police post too long and knew too much about too many people, and appeared not at all reticent to convey that fact. I am relieved by that fact, and let me tell you why.

The bipartisan character of these past difficulties means that we can now proceed to a bipartisan set of corrections and protections which, even in an election year, have a chance of being kept out of partisan politics.

While I am still on the subject of abuses for reasons of personal ambition or political advantage, let me say something about the board on which I serve, the President's Foreign Intelligence Advisory Board. I do not appear here as a representative of that Board or, for that matter, as anyone's representative, but simply as your guest at your invitation. I am not free to speak of the deliberations of that Board or the recommendations which have been given to a succession of Presidents, but I know of no restraint which can keep me from telling you that on not one occasion have I observed a single member of the Board bending a judgment or stressing a weight which would advance the political interest of the particular President, his administration, or



party. The very privacy which has been accorded to PFIAB has, I believe, sheltered it from the temptation to grandstand, politick, or otherwise bend before the political winds.

I was involved in one very reassuring episode in exactly that connection.

I was appointed a member of that Board at a point when the Watergate investigation already made it quite clear that there had been a serious breach of faith. Days before I learned of my appointment, I made an address critical of the Watergate affair and of responses to it which had been coming from the White House.

I thought Admiral Anderson, Chairman of that Board, ought to know of my views, and I quickly sent him a copy of those remarks. I received not the slightest suggestion that I desist from such expressions.

I was invited to testify, in particular to make some comments on our future requirements in the intelligence area. It is with great regret I must start by saying I see nothing in the foreseeable future likely to change the fact that sovereign nations remain virtually unimpeded by law in all of those areas involving national security.

I welcome the fact that efforts toward détente have been made, and I welcome the increasing realization in and out of Government that détente is a process, not a conclusion—a means of limiting the most frightful dangers of belligerency, and not of guaranteeing even that fact.

I believe some portion of the American people may have made assumptions about détente not shared by the architects of that policy. I also believe that, initially at least, the policy was oversold. But I am sure I say nothing you do know vividly when I add that the policy of détente does not effectively limit hostility, or ideological warfare, or local warfare, or organized subversion, or encouragement of terrorists, or many of the other hazards with which we have become all too familiar.

As Mr. Colby just said, and very well, we live in a far more interdependent world than was the case even 5 years ago, and things now happen so quickly that the reaction time for those who must make decisions is terribly short. Therefore, effective intelligence analysis and estimates are so much more critical.

Just 2 days ago, may I digress by saying, I saw a new IBM system which has the startling capability of digging into its memories of infinite capability and printing 15,000 lines per minute. That is more than the size of a full book printed by the computer per minute.

Regrettably we are still human with not a much greater capacity to absorb that than we had before the computer was involved.

I repeat, the decision time is terribly short now, and, therefore, effective intelligence analysis and estimates are so much more critical. The shock of the oil embargo made that painfully clear. But our dependency on foreign petroleum is only one of a number of areas in which we are dependent on other nations, and they on us.

The fact of mutual dependency, however, is no assurance that the economic conduct of nations will be benign; that the rivalries will not be painful and dangerous; that food, raw materials, national monetary reserves, and a host of other things will not be made the subject of

dangerous conflict with our adversaries, and even intervals of extreme tension with one or another of our friends.

These pressures which have radically narrowed the world, even as they have enlarged the hazards we face, will more and more press our country into conferences, undertakings, new bilateral and multilateral agreements—all of which have as a common purpose the reduction of unrestrained rivalry in arms, resources, and ideas.

Now, even if this were a lawful world, Mr. Chairman, the dangers would be great. But it is not a lawful world. It is not a world in which nations have a uniform commitment to ethical or legal concepts, and consequently the policymakers in our Nation have no alternative but to rely on the very best knowledge, the most objective analysis, the most careful assessment, the most able ways of understanding intentions, and the most objective estimates.

Just in the field of limiting arms, it is urgent that we know all that we can about our own capabilities and about those of any adversary, and particularly the Soviet Union. We have long ago concluded that mutual inspection is unavailable and therefore obviously hope that it is unnecessary. This will more and more place a particular burden on the intelligence community, since it is the sensor assuring our safety and an intellectual guarantor, at least, of prospects for peace we seek.

I recognize that even as I say this, you, of course, know this at least as well as I do, and that it must have been said before this committee a score of times. And yet I think there are certain fundamental truths, now that these hearings are drawing to a close, that must be reemphasized, perhaps less for the sake of your understanding than for the fact of public understanding of the role and requirement of intelligence.

We do tend, when we talk about intelligence, to look at the more dramatic aspects: The October war, the oil boycott, a massive grain purchase, climactic events in Cyprus, or Angola, or Portugal, or Chile. The fact is, intelligence will be at least as valuable in much less dramatic areas: The sharp analysis of trends—political, social, military and economic; potential developments, such as the formation of new cartels like OPEC; economic assessments, including assessments of the most unlikely events.

Our policymakers need to know what, for example, would be the result if, for several years, the industrial nations of the West suffered unabating acute inflation?

How sturdy would the democratic governments be?

How well would our various international organizations function?

Would the European Community remain intact?

Would we see the beginning of trade wars as countries sought to protect their weakening currencies?

We have needed to know how the member nations of OPEC both intended to and actually used the wealth acquired since the fall of 1973. The simple fact is that quadrupling petroleum prices set into motion the largest transfer of wealth in the entire world in all of modern times. The stability of international monetary arrangements depends on the kind of knowledge we look to intelligence to provide. And wise decisionmaking, informed by such intelligence, not only assists the economies of Western industrial nations, but enables us to better know the particular problems of the less developed nations as well.

There is a manner of technology about which we need to have the very best of intelligence. Recommendations are made which must be

decided by particular agencies in the executive branch: that advanced computers be sold to countries which are now not eligible for such purchases; that other forms of high technology be made available. We, of course, wish to enlarge our balance of trade and strengthen the American dollar in the process. We need to know, among other things, whether certain items which are on restricted lists are sold by us to one country, only to be resold to countries which are not eligible. But the much more penetrating questions with which intelligence must deal involve the complicated net assessment of all of the radiating effects which flow from the transfer of high technology from us to someone else.

I would like to look briefly at the means from which this intelligence derives. All of us would, of course, prefer to have this information gathered by and confined to researchers functioning in libraries, statisticians pouring over trade data, political and economic scientists providing their reasoned projections—and let me say I have just described the great bulk of the work which is performed within the intelligence community. Both in numbers of people and dollars spent, this is the giant slice of the intelligence dollar.

In addition, there is information of the most vital kind, not found in libraries, which we must also understand. There are on occasion tactical and collusive arrangements which are part of international trade negotiations. I think there will be more of these, and they will involve the pricing of raw materials which are vital to us. There is the entire difficult business of knowing as much as we can of someone else's intentions, a very difficult business, and yet absolutely essential.

There are those within the world's intelligence community who believe that terrorism may well prove to be the most serious of tomorrow's hazards. Mr. Colby earlier referred to this. It is already among the most brutal and difficult to anticipate among today's dangers. Let me say it has been anticipated in a number of instances. There are hijackings which did not occur, because of knowledge which had been gained by intelligence. I will not go beyond those statements. There is at least one foreign leader—no great friend of the United States, incidentally—who is alive today because we had learned of the details of a plot to assassinate him, and conveyed those details to him in time.

Even with the very best of intelligence, the terrorist finds easier pickings in open societies. If hijackings are commonplace in the Soviet Union or the People's Republic of China, they have done a pretty effective job in hiding that knowledge from us and yet I am sure we will all instantly agree we don't want to pay the price of that form of government to secure safety from the terrorist.

In each of the areas to which I have addressed these observations, there is a common thread: Intelligence will be even more the basic instrument enabling us to anticipate danger—military, political, economic; enabling us to know the direction from which the threat may come; and enabling us, if at all possible, to apply unprovocative responses in the hope of avoiding a larger danger.

Intelligence is the means which enables us to reach a widening net of agreements with some measure of confidence that they will be complied with. There is not the slightest prospect of further arms control measures without the most effective application of the technology and intellect which combine to produce good intelligence. And I will quickly add here, intelligence is not as good as it must be to perform

all of these functions, and I find no dissent on this proposition within the intelligence community. Incidentally, on arms control, I would like to observe we are talking about that problem at the time when the problem is still relatively manageable. Not many years into the future, we will regrettably be dealing with nuclear capabilities which are widespread and at the possible disposal of some who may be tempted to use that capability to suggest nuclear blackmail.

Chairman PIKE. Mr. Cherne, I thin! 'hat would be a good point at which to pause. We have a vote on now, rather than a quorum call.

The committee will stand in recess until 11 :30.

[Recess.]

Chairman PIKE. The committee will come to order.

Mr. Cherne, please proceed with your statement.

Mr. CHERNE. Mr. Chairman, I was just beginning some comments on the future of subversive warfare, or the more modest activities that are included in the phrase "covert action."

The Soviet Union has already made it clear that it does not interpret the Helsinki agreement as in any way moderating the urgency of its ideological efforts. Indeed, leaders of the Soviet Union have been remarkably candid in observing that they think the tide is running in their favor. There is no monolithic Communist movement, but there are Communist Parties in most countries which are more or less available to advance the interests of one of the centers of Communist power.

I am doing no more than describing the events which occurred in Portugal, which presently exist in Angola, and which hopefully will not threaten a Spain in transition. The Italian Communist Party may be closer to achieving its purposes in Italy today than it was when we were so fearful of that prospect in the late 1940's. Now, shall we eliminate, under any and all circumstances, the ability of the United States and other Western democratic nations to try in some modest degree to apply some counterthrust to this otherwise unrestrained subversion? Are we simply to conclude that the very nations which had hoped that Angola might in fact be independent, must now sit by helplessly as one form of colonialism is replaced by another?

In a public interview within the last month, Gov. Averell Harriman, who is no great fan of recent foreign policies, was quoted as saying that his greatest concerns are not with the fall of one city, but rather with the overthrow of countries and governments worldwide by Russian undercover activities.

I quote specifically: "The Russians are not nuts, they are not crazy people, they're not Hitler. But they are trying to dominate the world by their ideology and we are killing the one instrument which we have to fight that ideology, the CIA."

Incidentally, I happen to disagree with the bleakness of the Governor's assessment. I do not think these investigations will have that effect. Clearly that is not your purpose. Hopefully, instead, this committee will have added to our understanding of what needs to be done to increase the effectiveness of the intelligence product and to promote the more efficient organization of the community so that it may achieve the ends we require.

I do regret, however, that it is in the nature of an investigation, especially one which focuses on inadequacies and misbehavior, that the resulting public understanding will neither be complete nor balanced. You have identified some of the intelligence failures. How I wish it had been possible to illuminate some of the very considerable successes. The very fact that they exist is the strongest reason for keeping their nature and their means quite secret.

Let me just say I have already been pressed here to identify who that leader was of whom I spoke and from which country. I was reminded of these problems just last week in seeing an old movie on television, "Tora, Tora, Tora." In the interest of vital security even a President, Franklin Roosevelt, was for a time taken off the list of those privileged to see the results of the "Ultra Machine" which broke the codes of our enemies. President Roosevelt was allegedly removed simply because he had been careless.

Unfortunately, an investigation like this one does not provide the opportunity for the public to have the sense of the thousands of decent, able, extraordinarily professional analysts, painstakingly applying research and scholarship, doggedly reviewing prominent and obscure facts and data so that the policymaker may have timely analysis, assessment, and recommendations. They are truly an unheralded group of men and women. And incidentally, I do appreciate the fact that I saw in one newspaper, Mr. Pike, a quotation from you also complimenting a number of these people. They are an unheralded group selected from scores of professional disciplines—economists, historians, psychologists, translators, lawyers, monetary specialists, geographers, doctors, military analysts, biologists, cryptographers, optics and communications specialists, and a host of other fields of scholarship—working toward a common purpose that those who must decide have at their disposal the very best of knowledge and understanding to illuminate their decisions.

Mr. Pike, on Monday night as I watched television news, I heard you say that it is not the Soviet Union which is our greatest danger. If I correctly quote you, you said that the greater danger is that the people no longer believe what their Government tells them. I do agree that we have a serious crisis of belief—of confidence in our institutions. But let me dissent from your observation on two counts. Whatever the failure of our own Government—and those failures include this body as well as the executive branch—those failures are within our capability to control, correct, or change. That, thank our Bicentennial stars, is our good fortune. But whatever danger may lie before us, from the Soviet Union or any other foreign source, cannot be readily corrected by the American people. No ballot box will diminish that danger; no burst of renewed faith among us can altogether deflect that danger—not here, not in Angola, or Portugal, or Central Europe.

I dissent also on other grounds; they are no less serious. There is a crisis of belief in our Government, as you have said, but it is not simply that. We are in the midst of a crisis of all authority—and this is the key point of the nature of the world into which we are increasingly moving. We are in a crisis of all authority, of all our institutions. Those who study public opinion of the American people agree that our regard for all our institutions—medicine, education, religion, military,

executive branch, the Supreme Court, the Congress, business, organized labor—our confidence in each of them is at the lowest point since we have measured these attitudes. In fact, not one of those institutions now has the high confidence of a majority of the American people. I suggest, therefore, that when any of us who are leaders in any walk of American life think we can repair our own misfortune by identifying the greater distress of someone else's trouble, we may be deluding ourselves.

We all share the difficulties of what Eric Hoffer calls an "age of disillusionment." A novelist reminded us a number of years ago—it was James Joyce—who said, "History is a nightmare from which we awaken." It is hard for me to know at this moment: are we in a nightmare or have we just awakened?

While there is still time, I urge we end this orgy of reciprocal abuse, escalating disbelief, and profligate accusations. There are sins enough which we have committed, but it is not for these that we seek expiation so much as for the difficulties and frustrations which simply flow from the fact that we are living in the most complex and dangerous time in the entire history of mankind.

I will conclude, gentlemen, by telling you of a most extraordinary coincidence. I received the invitation to share these thoughts with you on Monday. On Tuesday I was obliged to travel to California. On that plane, sitting directly behind me, was an old, tired, stooped and, to me, surprisingly small woman. I had imagined her to be taller. Because she is a person whose wisdom is widely conceded, I imposed on her. I told her that I would be testifying today and that I knew that the problems in her country were quite different than ours. I thought nevertheless that she might have some observations which would be useful to me, and asked whether I might put four questions to her. I will recall that exchange as exactly as I noted it immediately after I returned to my seat:

Mrs. Meir, each of our countries are democracies. We accept ethical and religious restraints on our behavior. Do we have any right whatever, Mme. Prime Minister, to conduct covert programs in other countries, to meddle in their affairs, seek to change their outcomes?

*Mr. Chernie, we forget that other countries are not like ours. They are not governed by the same restraints. They don't hesitate to do the things which democracies worry about. Look now at Angola. Must we all sit by and watch? Mr. Chernie, I attended a Socialist conference in Berlin last February, and we heard then what would happen in Portugal. And we did nothing. And it happened as they said it would. But we remain paralyzed by our own doubts and confusions.*

But Mrs. Meir, our Congress understandably feels it must know what is being undertaken. Don't you have the same feelings and pressures in your Parliament, your Knesset?

*Frankly, no. We have a Foreign Affairs and Security Committee of the Knesset, but they do not expect to be told of things that would be better if they did not know. But perhaps we feel a sense of danger which is not felt in your country. Also our representatives, Mr. Chernie, know that we will not use our intelligence abilities for things which are political, which intelligence people should not meddle in.*

Mrs. Meir, can you tell me, since our countries each have excellent intelligence services, how did we miss the Yom Kippur war?

*Well, I will tell you this: we should not have missed it. I think we had enough information, but there was obstinacy. It was not read properly. And you know your people did the same thing and helped reinforce our refusal to believe what we should have understood. No, I tell you, we should not have missed that one.*

One final question, Mrs. Meir; do you have problems keeping things secret which must be secret?

*Sometimes. But not as in your country. But this is a problem of democracies. If you'll forgive me, it's a misunderstanding of democracy. Because a country is democratic, must everything be known? Must we weaken ourselves and strengthen our enemies? In democracies we think all countries are like ours. Unfortunately, Mr. Cherne, they are not.*

Mr. Chairman, I sometimes think we act as though we're a group of honorable men playing poker in a 19th century saloon. There, if someone made an effort to look at another player's cards, he'd run a high risk of getting shot. In the game of nations, if we don't, we run a similar danger.

In 1888, Lord Bryce in "The American Commonwealth" said that America was "sailing a summer sea toward which as by a law of fate the rest of civilized mankind are forced to move." Ambassador Moynihan, in 1976 "The American Commonwealth," recently wrote, "Liberal democracy on the American model tends to the condition of the monarchy in the 19th century: A holdover form of government, one which persists in isolated and peculiar places here and there, and may even serve well enough for special circumstances, but which has simply no relevance to the future. It is where the world was, not where it is going."

Mr. Chairman, both comments, a century apart, are eloquent. I believe they were both, at least in part, wrong. We were neither sailing a summer sea then, nor are we about to fall off the edge now. The world's troubles are great and our problems in dealing with them manifest. This committee is devoting its serious thought to some of those problems. Intelligence cannot help a nation find its soul. It is indispensable, however, to help preserve that nation's safety while it continues looking.

Chairman PIKE. Thank you very much, Mr. Cherne. That was a fine, fine statement.

Admiral Rectanus, would you come to the table now and present your statement?

Admiral Rectanus, we are delighted to have you here. Admiral Rectanus is in the Office of the Assistant Secretary of Defense for Intelligence, where he has the title of Deputy Assistant Secretary of Defense for Resources and Management.

Please proceed.

**STATEMENT OF VICE ADMIRAL EARL F. RECTANUS, U.S. NAVY, DEPUTY ASSISTANT SECRETARY OF DEFENSE (RESOURCES AND MANAGEMENT), OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (INTELLIGENCE).**

Admiral RECTANUS. Mr. Chairman, first. I would like to associate myself philosophically with the remarks made by Mr. Colby and Mr. Cherne. I would like, of course, to emphasize that the views I am about to give you are totally my own. They do not in any way reflect the official position of the Department of Defense or any element thereof.

Chairman PIKE. Admiral, before you start, having said that, are you telling us that you are up here making this statement without having cleared it with the Navy or the Department of Defense?

Admiral RECTANUS. It is cleared with the Department of Defense, but it is not an official statement representing the views of the Secretary or any element.

Chairman PIKE. Go ahead.

Admiral RECTANUS. It is a pleasure to appear and present my views on legislation or administrative changes necessary for the improvement of our intelligence capabilities.

I might say, Mr. Chairman, that we are coming in this presentation to what might be called very mundane or pragmatic matters.

First, I would say that intelligence, like politics and religion, is a subject about which a great many people feel well qualified to speak. However, in intelligence we learn at a very early stage to classify our sources because in most cases, the reliability of the source is as important as the information itself.

The source you are now listening to has been in the Navy for almost 33 years and has been a Navy special duty only officer in intelligence for the past 19 years. Before that time I was a subspecialist officer in intelligence.

If the purpose of an intelligence organization is to produce a quality foreign intelligence product, we must first attempt to define what we really mean by quality. Unlike a battle tank, an F-15, or a 963 destroyer, an intelligence product will have various attributes of quality to a wide variety of consumers of the product. Moreover, the real quality in many cases has delayed action characteristics. The quality of the product may only be recognized after a certain event occurs. On the other hand, a quality product is inextricably bound with prior policy and operational actions taken outside the intelligence organization. And, of course, the intelligence product is most always the result of varying vectors of uncertainty.

What then is a quality intelligence product? I suggest that it has the following characteristics:

First, it has a high sensitivity to what is really important, as opposed to trivial.

Second, it recognizes that, for all the scientific underpinnings, it is essentially a result of an art form and specifically addresses the inherent uncertainties involved.

Third, it is controversial but it not so much "predicts" as it registers change and the rate of change.

Fourth, it is customer oriented, and

Fifth, over time, the product is proven accurate and, thereby, has been useful.

Because of the complex nature of intelligence, one can rationalize the present state of U.S. intelligence inadequacies. However, there is substantial support for the thesis that the current intelligence product meets few of the foregoing characteristics in an adequate kind of way. There are too many criticisms from too many quarters not to recognize that we have problems in requirements and priorities; that we do not recognize and emphasize many of our uncertainties; that we have no real mechanism to register change and rate of change; that many consumers are dissatisfied; and that our products on some important issues have been inaccurate.

But some intelligence consumers must share responsibility for these shortcomings and failures. Among the policy and decisionmakers,



there are those who are interested only in consensus or intelligence products tailored to preconceived ideas, and those who do not take the time to attempt to understand the capabilities and limitations of intelligence. It has been said that the leader is 90 percent of an organization. It has also been said that the leader only obtains that which he demands. If there be validity here, we must perforce ascribe the present inadequacies of intelligence at least partially to the policy and decisionmakers.

Intelligence is a tool. It has two fundamental attributes:

First, it permits an orderly addressing of work to be performed—including decisionmaking—and more important in my mind:

It establishes the framework by which every human being associated therewith can provide maximum value in work performance.

Due to the inadequate state of the art of evaluating intelligence performance, and the nature and difficulty of attempting to learn that which is purposefully denied, the organization of intelligence, as contrasted to its product, has been the center of emphasis over the past 15 years. The watch words of this emphasis have been "management" and "fiscal efficiency." As a result, while lip service has been paid on occasion to product, there has proliferated a system of committees, boards, councils, and layers of management which have produced a complex bureaucracy. This has resulted in a situation in which it is not only difficult to perform the production of intelligence in an orderly manner, but also to obtain the maximum value from the humans in the system. Therefore, it is suggested that the existing organization has, all too often, served to inhibit the attainment of a quality product.

Organization is not an "end," it is a "means." In the intelligence business, probably more than in any other governmental endeavor, quality people are an absolute prerequisite for producing a quality product. It is patently impossible to expect to attract and retain quality personnel in an organizational environment which diffuses personal responsibility and accountability, and exalts management rather than substantive intelligence achievement.

Who needs that kind of quality intelligence product? At the risk of oversimplification, one can say that there are two classes of recipients, not mutually exclusive, of the product. These are the decisionmakers and the decision implementers.

In the general category of decisionmakers, we place the Congress, national command authorities, executive branch, agency and department heads, including the Secretary of Defense, the Service Secretaries and Service Chiefs. To a lesser extent, this category would include the unified commanders.

The group of decision implementers may be characterized in part by U.S. Embassies abroad, the deployed military forces, the military-industrial complex of weapons systems developers, and the Armed Forces support structure.

While in no way minimizing the importance of decision implementers, the major problems we have or allege that we have, involve the decisionmakers. If it is agreed that a quality product is our primary consideration, we should then be willing to accept, if need be, a certain derogation in fiscal and management "efficiency." Therefore, let us for a moment look at an idealized product-oriented organiza-

tion—leaving aside for the moment any consideration of management or fiscal efficiency.

Each decisionmaker in the national security field has a statutory mission which requires an independent intelligence analytical support. Providing each his independent analytical capability would tend to facilitate, in my view, the quality of that support. The decisionmaker could define and set priorities for his requirements and provide the personal direction. The support organization could tailor its product to the decisionmaker's needs. While this would not in itself insure a quality product, in my view or in someone else's view, it would place the responsibility for such a product squarely where it belongs—on the accountable decisionmaker.

Providing each policymaker his own analytical capability would require, obviously, a central coordinating mechanism. This mechanism would be needed not so much to reduce "duplication" and "competition" but, rather, to support the President, report to Congress, provide for national substantive estimates and to coordinate the finished intelligence data banks upon which all analytical organizations must draw.

It would appear evident that the coordination mechanism needs strength and independence. It must be credible with the national security departmental heads, the President and the Congress. This would argue for a man of stature with a sufficient staff to coordinate the substantive activities of the decisionmaker's analytical organs and to produce national estimates in his own right. This individual might be titled the Director of U.S. Intelligence, DUSI, the Director General of Intelligence, or any title that you wish to give to him. In order to provide him the authority required, he would have to be made a direct subordinate of the President.

The provision to each decisionmaker of his independent substantive analytical element would require some rethinking of our present community organization. As we attempt to provide each of our decisionmakers with an analytical intelligence organization, we note that the Secretary of State, the Secretary of Defense, and the services all currently have, in various stages, analysis type organizations. If we consider DIA as Secdef's support, we find JCS and Treasury without elements and the CIA without an agency to support.

There is a body of opinion, hotly contested, which believes that the present requirement for DIA to support both the JCS and the Secdef is dichotomous, and that the Chairman, JCS should have a dedicated J-2. From a strictly quality product standpoint, this might appear to have great merit. Other agencies, such as Treasury, could form their own dedicated unit. In actual fact, the present line between Treasury Department "analysts" and the intelligence function appears gray to many of us.

But what to do with the CIA? For political as well as practical product reasons, there is a need for an intelligence analytical organization which crosses departmental lines. Since we have given the Director of U.S. Intelligence or the Director General, as you wish to call him, the responsibility for national substantive intelligence, he must have a strong analytical staff. Therefore, we would assign to him part of the analytical—but only the analytical—elements of the CIA and such parts of the present intelligence community staff and the national intelligence officers as necessary.

To this point, we have developed an organization or the start of one for the intelligence community based wholly on the theory that each decisionmaker has an analytical organization and that such organizations are dedicated solely to the production of quality products. But what happens to all management, collection, and fiscal matters, and the like?

The case heretofore rests upon the premise that the analytical organs each serve a decisionmaker with a product tailored to his needs. But, isn't this inefficient, you ask.

If we consider that analysis is but a small fraction of the total intelligence budget, one could say that such inefficiency is irrelevant. One could also say that it is a small price to pay to obtain divergent views and alternative recommendations. And, of course, there is nothing we have said thus far which inhibits fiscal control authorities from addressing this problem in a budgetary way.

There are two main areas which need consideration in testing this strawman thus far: The role of common service product—or what we might call "production management"—and the effect on the production agencies' product of having nonproduction management responsibilities.

There are few existing intelligence agencies which do not as a matter of real world fact make analyses of subjects which might appear to some to be only peripheral to their mission. Both State and CIA work in the military intelligence field. DIA and the services work in the political and to a lesser extent in the economic area. When one looks at this problem very carefully, it soon becomes apparent that key decisionmakers must cross boundaries in order to carry out their statutory missions.

It is suggested that the decentralization of production has already been endorsed by the Director, DIA, as policy in some limited fields and work is proceeding along those lines. The endorsement of an organization set forth thus far would serve to promote this concept. While common service production could be implemented to a greater or lesser extent, such implementation would be based on quality product rather than cost efficiency.

A thesis of this presentation is that the analytical organizations should be as free as possible from nonproduction management responsibilities.

Nonproduction management responsibilities are primarily in the field of collection and processing. Our present system is hybrid. NSA is the Sigint collection manager, but we have no similar organization for other collection capabilities. In line with our objective of eliminating nonproduction management responsibilities, let us look first at photographic reconnaissance and then human intelligence, or Humint.

Many agencies are involved in photographic reconnaissance collection, but there is no manager to provide centralized coordination and provision of processed data. It would seem prudent to constitute such an agency in a manner functionally similar to NSA. The broad parameters of this would be: Join the current development and management organization with the current processing office in a so-called National Photographic Agency—NPA—or keep the name of an existing agency.

Transfer all photographic collection management from DIA, CIA, and others to the NPA.

Subordinate the NPA directly to the Secdef as is the case with NSA.

Have NPA act as an agency of common concern supporting all analytical organs with processed Photint.

Place all collection development in the NPA—or transfer it to the Air Force.

The philosophy expressed above applies also to human intelligence, or Humint. One of the major problems to be addressed is the placement of covert action and the close relationship of Humint with covert action. In my view, since the Assistant for National Security Affairs is the key player in covert action, it would seem desirable to bring him into an appropriate association. The amalgamation of clandestine training under CIA is already an accomplished fact. The broad outlines of a centralized Humint agency would be as follows:

Establish a human resources agency, HRA, reporting to the Assistant for National Security Affairs.

Assign to this agency the total responsibility for the Humint collection manager.

Transfer present service clandestine human assets to the HRA, insuring that wartime capabilities are maintained. Assign all CIA Humint assets to this organization.

Return service attaches to the services with policy formulation and coordination assigned to HRA.

Assign FBIS to HRA.

Assign covert action to HRA.

The centralization of the related collection and processing efforts into single organizations is designed to provide for improved intelligence support through improved management of requirements, tasking and response. It can also provide the means by which improved fiscal and budget management can be brought to these same functions.

Thus far, we have optimized the intelligence community for the delivery of a quality product, provided for its national substantive coordination in the Director of U.S. Intelligence, stripped away management functions and covert action, and provided centralized managers of Sigint, Photint, and Humint.

It remains for us to test the concept in the fiscal and budget arena.

Taking into account the significantly increased role being played in intelligence by the Congress, the community is faced with a multitude of fiscal management mechanisms.

The objective of fiscal management must be to facilitate the delivery of a quality intelligence product. We have previously noted that the analytical effort is but a very small fraction of the total intelligence budget. For this reason, it would appear prudent to concentrate our fiscal and budget emphasis on the Sigint, Photint and Humint programs while not, of course, omitting other intelligence and intelligence-related resources.

At present, the complex program and budget cycle involves countless studies, hearings and briefings within each service and agency, the OASD(I), the IC staff, the comptroller organizations, the IRAC, the Excom and the OMB, in addition to the Congress.

The key questions relate to the role of the DUSI, the executive committee mechanisms, congressional relations, and the role of OMB and the Secretary of Defense. Since we have given the DUSI the primary congressional interface role, we are forced to compromise somewhat our concept of substantive purity in the field of fiscal management. Although he has great substantive responsibilities, it is difficult to envision his carrying out the congressional interface role without some fiscal overview of the community. A key premise is that tinkering with the analytical organs of noncorresponding decisionmakers should be avoided at all cost. This means that the Director of U.S. Intelligence would have little or no comment to make on INR, DIA and like organs in support of their decisionmakers.

On the other hand, to represent the executive branch he must be aware of the scope and costs associated with the various organizations and programs. He should not be placed in a position of detailed justification for these capabilities.

As far as the collection organizations are concerned, his voice would have to be heard. The DUSI has cognizance for the overall community budget, and it is these organizations which comprise the bulk of the resources of that budget, over 90 percent. They are also services of common concern supporting the entire community and, therefore, need community guidance and control.

The Secdef should retain control over the Defense budget and responsibility for the collection organizations in the Department of Defense.

In this regard, an Excom mechanism for the collection organization composed of the DUSI and a high-level defense official would appear appropriate.

The OMB should minimize involvement in intelligence issues and confine itself to setting targets and coordinating and adjudicating between Government agencies.

In conclusion, given the premise that the intelligence community exists to create a quality foreign intelligence product, the organization of the community must be structured to maximize the ability to create that product.

All other things are secondary.

The development of an organizational structure for the community should take into account the fundamental difference between the few resources devoted to analysis and the many resources devoted to collection, thereby permitting parallelism in the analysis function, but centralizing the collection and processing function.

Providing each decisionmaker with his own analytical organization should insure the availability of what he considers, rightly or wrongly—many times wrongly—to be a quality intelligence product.

Since the DUSI and Secdef each have significant responsibilities with respect to the national resource collection and processing organizations, they should share in the centralized management and fiscal direction of these organizations.

The organizational structure of the community set forth in this idea outline in my view maximizes those features contributing to the creation of a quality foreign intelligence product and, yet, assures all concerned adequate management and fiscal efficiency.

Chairman PIKE. Thank you very much, Admiral Rectanus.

Our final witness will be Mr. Arthur M. Cox, a writer and lecturer on foreign affairs, and a former official of both the Department of State and the Central Intelligence Agency.

Please proceed.

**STATEMENT OF ARTHUR M. COX, WRITER AND LECTURER ON FOREIGN AFFAIRS AND A FORMER OFFICIAL OF BOTH THE DEPARTMENT OF STATE AND THE CENTRAL INTELLIGENCE AGENCY**

Mr. Cox. Thank you, Mr. Chairman. I don't have a written statement. I think one of the reasons I am here is because I have written a book called "The Myths of National Security," which has two chapters dealing with intelligence, and I have written some articles, a recent one titled "Making Better Global Guesses."

I would like to talk mainly about the estimating side of intelligence, which I think is the most important part of the entire intelligence effort. I want to compliment this committee for giving as much attention as it has to this subject and I hope that as you move forward with your final recommendations, this will be an area that you will give major attention to.

I started my career in OSS, and I worked on the OSS planning board, which helped to plan the CIA. Also, I was in an organization called the Psychological Strategy Board that President Truman established, which drafted the strategic concept for waging the cold war.

One of the things that happened in that process was that the Central Intelligence Agency became the main arm of our Government in taking on international communism. I thought at the time that that was entirely appropriate, and still do.

However, I think that in the course of organizing to fight international communism, the CIA became somewhat diverted from one of the major functions set forth in the National Security Act of taking the responsibility for advising the President on all intelligence matters.

It seems to me that in the intelligence area, there are two major goals that should be accomplished. One is the job of early warning of critical developments, so that our Government can take action to do something about them, and the other is this job of making estimates—as Bill Colby says, "of the measurement probability"—so that our policymakers can make the best policy possible.

I might just read from my article, "Making Better Global Guesses," some remarks about the business of estimating:

Sherman Kent, who served for more than 20 years as chairman of CIA's Board of National Estimates, has called the intelligence estimator a "speculative evaluator." The estimator is not a collector, collator or researcher. His job is to look at the available data about a particular problem and make an educated guess about what is going to happen. In Kent's words, such informed guessing, "subject to error as it has to be, is far preferable to the alternative—the crystal ball." It is important, though, to be fully aware that intelligence estimating is not a science; it does involve speculation which can result sometimes in serious mistakes.

The possibility for error increases as the estimate moves from such tangible subjects as crop forecasts, levels of industrial production, order of battle or

numbers of missile silos to the emotions and thoughts of human beings—the intentions of political leaders. Politics and human behavior—especially the intentions of individual leaders—have always been the most unpredictable. Thus, even the best informed and most experienced political observers are vulnerable to making occasional large goofs.

Even when most of the data is hard, as in crop forecasting, mistakes can be made. Our high flying space cameras could observe precisely all of the Soviet wheat fields and the daily weather over those fields, but we seriously misestimated the size of the latest Soviet wheat crop. In the arena of human affairs, of course, the margin for error is much greater.

The recent report of the Commission on the Organization of the Government for the Conduct of Foreign Policy concluded that "national intelligence estimates appear to have little impact on policymakers today, in large part because key consumers prefer to base their own estimates of future developments on competing sources of information and analysis." If this is an accurate finding, it indicates the sorry state of current U.S. intelligence estimating. In the past, there weren't supposed to be any competing sources of information and analysis. The estimators were supposed to have access to all pertinent information available to the U.S. Government, whether it came from the press, the universities and other open sources or from the most highly classified documents.

Now, Mr. Chairman, it's my opinion that our vast resources, our remarkably effective technology, and our many agencies working in intelligence are not doing the job that we ought to be doing to supply our policymakers and our Congress with the policy information that they need in this very difficult time in our history. I think that one important thing to do about that is to make sure that we have an organization that provides for the kind of estimating that the best minds in this country can put together. I think today what has happened is that we have a national security establishment and a Secretary of State who are controlling intelligence matters in a way that was never contemplated when the National Security Act was drafted.

Our Director of Central Intelligence is not the principal adviser to the President on matters of intelligence. He does not have the kind of role that was contemplated when we drafted the National Security Act.

I think that what is needed now is to get back to a central point in the Government where a man is made responsible for bringing the estimates forward to the President and the National Security Council as well as to the Congress. This man should not be the Secretary of State or national security adviser, but should be the top intelligence estimator.

I keep stressing the Congress, because I think one of the sad aspects of the recent events in our country is that the Congress has not been sufficiently well informed, and I think in the matter of legislation, as well as budgeting, the Congress can benefit greatly from good national intelligence estimates.

In order to do this, though, it is essential that we get back to the original concept in the days of Sherman Kent of putting together a group of men and women who are the outstanding people in the business of making speculative evaluation, and that does not exist today. In my opinion, intelligence estimating has eroded through the years, and we now have sort of a hodgepodge arrangement, where we have national intelligence officers who are specialists in various fields, independently working within the intelligence community on special assignments. We do not have a group of wise men and women who are taking on the responsibility of estimating as it used to be done before. One thing that never, never did happen, when the National

Security Act was drafted, was the creation of a truly independent arrangement for national intelligence estimating.

Chairman PIKE. Mr. Cox, I am going to interrupt you, I hope for your benefit. We have 5 more minutes before we will have to leave, at which time we will break for lunch. Please continue now.

Mr. Cox. I will wrap it up in less than 5 minutes, Mr. Chairman. My concern is that we need in the national intelligence estimating business true impartiality, true independence. There must be a separation of the intelligence estimating process from operations. In the CIA, as you know, we have had operations as well as intelligence estimating. We also have today the Department of Defense and the Department of State participating in the intelligence estimating process, and filing dissents if they indeed do dissent. The result is that the policymakers and operators are also making the estimates.

I believe that either a restructured CIA, which gives emphasis to national intelligence estimating, as I have stressed it here, or a new organization under the Executive Office of the President, should be created to give independence and prestige and opportunity for impartial intelligence estimating, so that we do not have the operating agencies making their views part of the intelligence product. I think policy and operations, and estimating have to be separated.

Thank you, Mr. Chairman.

Chairman PIKE. Thank you very much, Mr. Cox. I think the rational way to proceed at this time would be to recess until 2 o'clock this afternoon, at which time we will proceed with questioning.

[Whereupon, at 12:20 p.m., the committee recessed, to reconvene at 2 p.m. this afternoon.]

#### AFTERNOON SESSION

Chairman PIKE. The committee will come to order.

First, I want to state that I think we have heard some excellent statements today from people who are obviously experienced and knowledgeable. I am not concerned when you, Mr. Colby, disagree with my judgment as to our ability to predict attacks on America. I am a little disturbed when your statement is based on the allegation that we have not looked into our intelligence capabilities about the Soviet Union—when one of the things that we have been fighting hardest to get is intelligence about the Soviet Union, and one of the things which has been most consistently denied to us is that sort of intelligence. But as I look at the record of the past, ranging from Pearl Harbor, where the intelligence was on the radar screen and nobody saw it, to the outbreak of the war in Korea, to the attack upon the *Liberty* in the Mediterranean, to the attack upon the *Pueblo* off North Korea, the EC-121 off North Korea, I find it difficult to see in our past performance, ranging right up to the Arab-Israeli war, any indication that we have greatly improved our ability to predict events.

You cite as an example of an intelligence success our ability to predict the denouement of the war in Vietnam. It seems to me that if that is how our successes are measured, that itself makes a pretty good argument for what is wrong with our intelligence operation.

In my judgment, the war in Vietnam ended the way it did in principal part because it was not supported in the United States of America. America lost its desire to support the war in Vietnam, and when we



got down to that point, in the last bunch of little flurries about Vietnam, we found that a commitment had been made that if the North Vietnamese did certain things, America "would respond with full force."

Now that particular commitment was intelligence which was not known to the Congress, and it was not known to the American people. Today's papers reveal other things which are not known to the Congress and the American people.

My question to you—and I would like you also, Mr. Cherne, to address this—is what is the advantage of secrecy in a world where large events cannot be kept secret, and in a world where the support of the American people needed to affect events worldwide must be gained—and I believe can only be gained—by telling them the truth?

**STATEMENTS OF WILLIAM COLBY, LEO CHERNE, VICE ADM. EARL F. RECTANUS, AND ARTHUR COX (Resumed)**

Mr. COLBY. That is a good question, Mr. Chairman.

I think to start with, the reason I was disturbed by the assertion about the attack on the United States, which was I believe, the thrust of the charge, is that it is different than the Arab-Israeli war. It is different than attacks on the *Pueblo* or the *Liberty* or the EC-121.

I am talking about a threat to our country, not to an element of our Armed Forces in the vicinity of another situation. I agree with you there is a problem there.

We are exposed in an area where our troops are exposed to a very quick attack. There is no question about it.

Chairman PIKE. A missile attack on the United States of America would—

Mr. COLBY. Take 30 minutes.

Chairman PIKE. Thirty minutes?

Mr. COLBY. Thirty minutes.

Chairman PIKE. That is a relatively quick attack.

Mr. COLBY. Yes. A quick attack could occur, but the purpose of intelligence is to try to look at all the factors in the situation.

Chairman PIKE. Don't get me wrong. I wholly agree with you that that attack is not about to occur. I don't mean to indicate in any sense of the word that it is about to occur.

Mr. COLBY. No, you said—

Chairman PIKE. But I say that in the time in which we live, and the amount of time it would take to launch such an attack—based on all the historical knowledge that we have and empirical experience that we have—we would not know about it.

Mr. COLBY. I contest that, Mr. Chairman, because I don't think that those things come out of the blue. I think that our knowledge of the forces and activities of the potential attackers of the United States is such that we would see an increase in tension, as we saw an increase in tension in the Arab-Israeli situation, and as we saw certain other increases in tension around the world.

Chairman PIKE. We saw the increase in tension in the Arab-Israeli situation and failed to predict the attack.

Mr. COLBY. And we certainly raised the consciousness of our leadership to the danger of such an attack.

Chairman PIKE. We raised it to such a point that our leadership was telling the Israelis that they weren't going to attack and don't you do anything.

Mr. COLBY. We certainly did not want to encourage them into a preemptive attack, and I think that was the thrust of our position at that time. But I think a potential attack on the United States would be preceded by such developments of tension between us that we would be able to identify those plans and preparations of the armed forces of a nation capable of striking us. That was my difference with that.

On the larger subject of the values of secrecy, Mr. Chairman, I think we have tried to move in the direction that you are stating. We have briefed the Congress on a number of things. We have briefed the American people on a number of things that happen, through our intelligence or through our Government revealing the content of our intelligence.

With respect to any activities reported in this morning's paper, I can assure you that we are in full compliance with the law passed last December about informing the appropriate committees of the Congress of any activity other than intelligence gathering by CIA.

I do believe, however, that that law sets up those committees as representatives of the people and of the rest of the Congress. And it does recognize that there are some things which we cannot do, if we do them totally in the open, and therefore there is a range where secrecy is necessary to some degree.

Chairman PIKE. Do you really think that we can succeed in anything as large as a secret war in Laos without the support of the American people?

Mr. COLBY. I think we can succeed in conducting operations even of the size of Laos, briefing the appropriate committees of the Congress as we did, with a certain amount of unofficial indication of what is going on, but without an official admission by the administration or the executive branch of the Government of that activity. Otherwise we could not have continued it because it would have called into contest the obligation of the North Vietnamese, the Soviet Union, and others to comply with their side of that agreement as well.

Chairman PIKE. My time is up.

Mr. Cherne, would you like to comment? I apologize for mispronouncing your name. I have done that twice now.

Mr. CHERNE. Let me take the last question, if I may, first.

You have raised a question which I find very troublesome. It is a very serious question. How, in fact, does a democracy manage to secure the support of its people in a situation such as the Vietnam war, where there is an activity as large as the activity which was conducted in Laos, which is not brought to the attention of, and which does not have the knowledge and support of the American people?

I don't have an answer to that, Mr. Pike. I know at the same time—

Chairman PIKE. I don't either, Mr. Cherne.

Mr. CHERNE [continuing]. That we have this terrible dilemma. There are certain things which simply must be kept secret, and there are certain prices we must pay for that fact. I have no doubt whatever that you are entirely correct in saying that a substantial measure of the erosion of whatever willingness there was among the American people to persist with that war can be attributed to the attitudes on

Vietnam. The fact is that efforts were made by the Government of the United States at that time to conduct it in a way which exacted of the American people the absolute minimum of any kind of involvement including the cost of the war, not just a question of secrecy.

A second point, and one on which I think I find myself a little less frustrated: You asked the question, or raised the question, that since Pearl Harbor we have had this really dreadful problem of being insecure about the question "Will we know?" If I may, I would like to quote a couple of sentences from what in my opinion is perhaps the very best volume on Pearl Harbor, by Mrs. Wohlstetter, published by Stanford University Press. The volume is entitled "Pearl Harbor: Warning and Decision," 1962. At the conclusion the author states:

It is only human to want some unique and univocal signal, to want a guarantee from intelligence, an unambiguous substitute for a formal declaration of war. This is surely the unconscious motivation of all the rewriting of Pearl Harbor history, which sees in such wavering and uncertain sources of information as the Winds code. We have seen how drastically such an interpretation oversimplifies the task of the analysis and the decisionmaker. If the study of Pearl Harbor has anything to offer for the future, it is this: We have to accept the fact of uncertainty and learn to live with it.

In fact, the major reason for the urgency of intelligence is not that it will end uncertainty, but simply because of the fact that since uncertainty exists we must make the very best effort we can at reducing it.

Now to the final aspect of your question—secrecy, the whole business of secrecy. I think a sense is emerging from these hearings that somehow or other this country is uniquely secret about its intelligence, when in fact the opposite is exactly the case and this is so extraordinary. Again with your indulgence, I want to quote Prof. Steven Dedijer of the University of Lund who I believe at one time was an agent of the OSS and may have been in the service of other foreign intelligence agencies. He is now a professor in Sweden. He writes of an experiment he did on intelligence. He said:

I mailed a letter to 10 foreign intelligence organizations in 10 countries. I asked in the letter for all the available information about the history, goals, structures, personnel composition, recruitment, and outstanding problems (of each organization).

From CIA in Washington I received about 15 items of literature weighing 1 kilogram, including a bibliography of books about the CIA. From the others, as of today, I have received nothing. And when I told a high Yugoslav Government official of my letter to the Yugoslav CIA he told me: "You are totally demented."

He estimates that, "about 90 percent of the literature on intelligence"—published anywhere in the entire world—"has been produced in America." And he says that if we add to that and "concentrate on the present national domestic and foreign intelligence," add to that "organizational intelligence, business intelligence, et cetera, then close to 100 percent of the literature is produced in the United States of America."

I suggest, Mr. Chairman, that we do have problems with secrecy and problems with the price a free society pays for it. Let me say I have pressed continuously, and I hope to continue to, in whatever opportunity I am given, for maximum declassification of anything which absolutely does not need to be secret. But there is a reverse side of that coin. We have problems with an inability to keep secret things which must be secret.

Chairman PIKE. Mr. McClory?

Mr. McCLORY. May I yield to Mr. Dellums who has to catch a plane?

Mr. DELLUMS. Thank you very much, Mr. Chairman, and I thank the distinguished ranking minority person for yielding to me.

I do have numerous questions, but because of time constraints, I would like to ask two questions that I think are important.

The first question I would like to ask of Mr. Colby, and the second of Mr. Cherne.

My first question, Mr. Colby, pointed out—and I am paraphrasing—that this country has a need for alternatives in the conduct of foreign affairs, foreign policy, and national security matters—an alternative that lies somewhere between diplomatic endeavors and calling out the Marines.

Let's move that from an academic or intellectual abstraction to a very real situation.

The Secretary of State very recently has indicated to the American people and the world that there is some level of involvement of the United States in Angola. Today we heard and we read an incredible story with respect to American involvement in Angola.

You mentioned there is sometimes in between diplomacy and calling out the Marines. What is happening in Angola is a war. Life and death are realities in Angola. I would assume that virtually everyone involved there has some degree of knowledge with respect to what, if any, when, where, why, how, and under what circumstances the United States may or may not be involved in Angola. However, there is one party that has no knowledge of American involvement in war, and that is the American people—the people of the United States and their Representatives.

Now how do you justify that?

We are not now talking about a little skirmish. We are talking about war. It would seem to me that in a democratic society which is governed by consensus of the people, people ought to know when their country is in any way involved in a war. That is a major, grave, risky situation.

Now, how do we justify keeping secret any involvement of the United States in a war situation—without the American people being party in any way to the conduct of that effort?

Mr. COLBY. Mr. Dellums, there are no Americans involved in that war.

Mr. DELLUMS. So we sent the——

Mr. COLBY. Mr. Dellums, the War Powers Act——

Mr. DELLUMS. How do you define "involvement"?

Mr. COLBY. If I may finish, the War Powers Act requires that the Congress be informed before the commitment of the U.S. Armed Forces. In the legislative history leading up to the adoption of that law, the proposal was made that commitment would include any involvement of any paramilitary or other forces in such activities abroad. That provision was stricken and was not adopted by the Congress. Around that time, we also changed the rules with respect to reporting to the Congress on the CIA's activities abroad which are other than intelligence gathering. The CIA is in full compliance with that law, and is in full compliance with the requirement that the appropriate committees of the Congress be briefed on any activity other than——

Mr. DELLUMS. Will the gentleman yield at that point?

Mr. COLBY [continuing]. Than intelligence gathering.

Mr. DELLUMS. I would suggest that the gentleman is probably correct with respect to the letter of the law. The question I am raising with you is that it seems to me that in my world, in my value system, it makes no difference whether U.S. uniforms are in Angola or in any other country. But if we are giving money or weapons or providing any other support that results in the death of human beings, then I think a technical response to the question is not responsive to the gut issue that I am raising. If we are in any way participating in activities that cause death, that is in fact a war, despite strict adherence to the War Powers Act which I voted against because it was a knee-jerk liberal response that inhibited our ability to adhere to the Constitution which says that Congress shall declare war. I am not talking about that now. I am talking about the moral issue; I am talking about the value and question of life and death. There are no uniformed persons there, but we put weapons in the hands of other people who wear other uniforms, and life and death takes place and we stand back and say that we are not involved. I think that is a hypocritical position.

I would like to get you to respond to that. I know my 5 minutes are almost up but I would like to ask one additional question—or at least get it on the record—and maybe Mr. Cherne can answer the question.

There is a great deal of concern expressed with respect to having a major intelligence-gathering apparatus so that we can predict an attack upon the United States. I may be wrong, but it would seem to me that the probability of an attack on the United States, on a scale of 1 to 100, is somewhere below zero. I don't see San Francisco being attacked or New York being attacked or Washington, D.C. being attacked. But where this country gets attacked is in the Vietnams of the world and the Angolas of the world and in other places around the world. We have had testimony where in many instances we can't predict an attack or a major event in the world, or where a covert activity gets us into trouble with other nations and other people around the world.

If we are going to be jeopardized, it is because of our ineptness in predicting major situations or where our covert activity, now that it has been uncovered, has been a major embarrassment to people in the United States.

It seems to me, that is where we are being attacked. And for us to misplace it on this cold war notion that in some way the United States is going to be attacked despite awesome ability to explode and kill—I can't understand it. We have to talk about how we get attacked in other places around the world. That speaks directly and clearly to how we conduct our activities in covert action and the gathering of intelligence around the world.

I would like you to comment on that and I would like Mr. Colby to comment on my initial issue—that we are not now talking about adherence to the War Powers Act. We are talking about life and death.

Chairman PIKE. Your time is somewhat expired.

Mr. DELLUMS. I won't be here for a second round. I am trying to get it all in.

Mr. COLBY. Would you like us to respond, Mr. Chairman?

Chairman PIKE. Please, Mr. Colby.

Mr. COLBY. In response to the first question, Mr. Dellums, I think the CIA and the U.S. Government are in compliance with the decision made by the Congress as to how this question should be answered. The Congress had an opportunity to require more than it did. It did not. It decided not to, and in the course of its decisions, and in the course of the laws adopted by the Congress, it clearly left a field for this activity, and it clearly made arrangements by which this activity—any activity—would be reported to the Congress.

As I say, we are in compliance with what the Congress, in its judgment, has deemed to be the best solution and in the interests of the United States.

Chairman PIKE. Mr. Cherne, would you address the other question?

Mr. CHERNE. I totally agree that the probability or even possibility of a Soviet attack on the United States is just a shade more than zero, and therefore it would seem logical to pay even less attention than we do to the Soviet Union, since we start with the premise. I am agreeing. The probability of attack from there is less than zero I was asked to comment on intelligence in the world we are entering, more than on the world we have been in. I think intelligence misreads the nature of the threat we face. I am not now talking particularly of the United States. I would guess that the same things are being said by the military and economic intelligence theorists in the Soviet Union. Let me try to clarify this concept with this analogy. I assert that the days of the Cuban missile crisis were in fact the entirety of world war III.

War now with these lethal weapons is not a war in which sane men can visualize that the weapons are likely to be used by either of the two powers. In fact, the purpose of the weapons is to make sure that their use is not a possibility.

I wish I could say it is absolutely not a possibility, but the purpose of maximum intelligence is to know whether or not the Soviet Union has acquired such strength as to lead it to suggest to the United States. "This is what we have, and this now, if you do not agree, is what we will do."

For example, I would not rate as zero the possibility of the Soviet Union moving the strength that it has in central Europe into western Europe. I don't want to be an alarmist. I am not suggesting this is something that is about to happen. I think the odds against it are large. Nevertheless, we are now not dealing on a scale of zeroes. We are dealing with higher probabilities.

Now should that event occur, it would almost certainly involve, prior to such an event, the Soviet Union satisfying itself that it had such preponderant power that all the power of the United States would still leave the United States impotent to take the very first step. I am merely reciting to you the actual events of the Cuban missile crisis. This is the way it was played out by the two nations.

I don't know whether I am being sufficiently clear, but I do know I am being very real. These are the very real dangers.

Now there is a second part to the question you have asked, Mr. Dellums, a very serious one. Those are the wars that occur in Vietnam and the Middle East.

Let me say that is not the shape of the war which is occurring in Angola, and incidentally, I do want to associate myself with the answer which was given.

No, the war which is occurring in Angola—and it is a war—is a war involving some three political factions, all of them Angolan, one of them for a very considerable time and a phenomenal amount of money and weapons, heavy weapons financed by the Soviet Union, and from what I read in the newspapers—I don't want to suggest, Mr. Chairman, that I am breaching any security, but I read this in the newspapers—these forces are manned by both Soviet and Cuban personnel. But this is a war among Angolans for the control of a country which itself is very rich in resources, but much more important, which may prove at some point to be a hinge on which Africa bends. Neighboring African countries, like Zaire, have very substantial interests in the outcome, in the hope that an Angola may still be free and in Angolan hands.

Now in that kind of circumstance, the aid we are talking about is the aid of weapons and material, given to one or more of the parties in, as I read in this morning's paper, an adjacent country, an African country, with the acquiescence, perhaps even enthusiasm, of the country in which delivery is made.

No, this is not the kind of war that occurred in Vietnam or that occurred in the Middle East, nor incidentally is this the kind of war in which there has been any problem of surprise. I don't think I have heard it alleged that there has been any question that those involved in policy in the United States have had inadequate advance information of the dreadful progression of events which have occurred in Angola.

Mr. DELLUMS. I thank both of the gentlemen for their comments.

Chairman PIKE. Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

First of all, I would like to say that I saw a TV program the other morning which was entitled, "The New Nelson Rockefeller," and I just want to say, Director Colby, that I think today we have had a very fine example of the new William Colby.

I don't say that in any uncomplimentary way, because during the period that our investigation has gone forward, you have been more or less on the responding end with regard to the investigation, charges and inquiries about our intelligence community. You have been very responsive and very helpful to the committee. Now, at this stage of our proceedings, when it comes to the question of perhaps restructuring, revamping, and building a better intelligence community, you have come forward with some very helpful suggestions and recommendations. So in both areas, with both the old Colby and the new Colby, I want to say that you have been extremely helpful to this committee, and I want to commend the other witnesses for their assistance here, too.

Mr. COLBY. Thank you.

Mr. McCLORY. Because of the limitations on time, you will be answering questions after my time has expired, and I would like you to respond and Mr. Cherne as well, and I may have a question for the admiral. The question arises with regard to covert activities, and covert activities can take on sometimes a broad and sometimes a rather narrow meaning.

It was suggested yesterday by Arthur Schlesinger, Jr., that the covert activities of political involvement in western Europe and in other areas in the 1950's were constructive and helpful and in our na-

tional interests, but without any later reference to that subject, there is now a great attack on covert activities. As a matter of fact, some members appear to recommend that we should have no so-called covert activities.

I have the feeling that perhaps covert activities are more vital now, as a part of an intelligence operation, than they were in the 1950's and perhaps at any earlier time in our history. I would like you to respond to that.

Let me just add this. The argument is made that because of the kind of society we have, whatever we are going to do, insofar as another nation's political efforts or efforts to defend themselves militarily or whatever are concerned, should be done entirely openly, and not covertly.

I seem to recall that Sweden started to help Portugal covertly, and now they have converted that covert support to overt control. Perhaps that is something that you would be able to comment upon.

My second question is—and I would like Mr. Cherne to respond to this if he would—in seeking to get maximum intelligence from intelligence gathering, is there any way we can accomplish this without utilizing the most modern techniques and devices, the bugs and telephone taps and sophisticated intelligence-gathering equipment that is available to us?

My last question is, should not intelligence remain strictly under civilian control, rather than be subject to military control? The Admiral suggested this sort of dual control of the defense state or the nonmilitary. I would question that, but I would like to have your comments on it.

Mr. COLBY. With respect to the first question on covert action, Mr. McClory, it is a fact that in the past few years this has declined to a very small percentage of the CIA's activity in either dollar terms or incident terms or personnel involved or whatever. This is a reflection, I believe, of the trend of opinion in the United States with respect to this question and, second, a reflection of the fact that the situation in the world required it much less.

As I look ahead to a future world, however, with the kinds of problems that I outlined in my statement, it would seem to me that there may well be occasions in which there will be a requirement for some quiet assistance to friends of America in other countries who are engaged in a struggle for the direction to be taken by that country, whether hostile to America or friendly to America. It would not surprise me at all if, in the next 5 or 10 years, the CIA's involvement in this kind of activity, with the full understanding and support and knowledge of the appropriate representatives of the Congress, will increase to a much more substantial level than it is at today.

Mr. CHERNE. Have you finished, Mr. Colby?

Mr. McClory, on your first question, given the need we have for the very best intelligence, you have asked me to speculate on whether it could not be somehow or other secured without all or any of these extraordinary, powerful technological instruments.

I, too, would find it more pleasant to live in that kind of world, but this is not that kind of world. If I am to judge from what I have read in this open society about certain capabilities that the Soviet Union apparently has, I think the Soviet Union may even have capabilities



to do things we seem unable to do. It is suggested, and I don't want to be more specific than that.

I am one of those who felt that when the United Nations concluded its work in San Francisco in 1945, that effort was essentially a failure, and I wrote so then. The charter did absolutely nothing to impede the sovereignty of nations, to limit their ability to use all of their resources in any area which they thought necessary for their own advancement, aggression or self-protection. It is an unfortunate fact that this remains an anarchic world. So long as that is so, it is a lawless world, and one in which we could not begin to dream of depriving ourselves of the instruments of knowledge, obtained by the best means of securing that knowledge, in the interest not only, incidentally, of the safety of the United States.

Let me illustrate where in fact the security of the world is involved. We talk too much about wars. The shift of resources involved in the quadrupling of the price of oil produced a sudden problem of OPEC petrodollar accumulations, how they were spent, what would be done with them. The hazards involved in just this placed in very real jeopardy the economies of Japan, Western Europe, and Canada as well as the United States.

All of the elaborate instruments we have to assure that some kind of international monetary system would hold up—and we have great difficulty with that international monetary system—made it urgent because of that petrodollar problem that we have as good a knowledge as anyone could possibly have. And it remains in the interests of the safety of each of our nations, and of the stability of the Western World, that we secure maximum knowledge of what is going to happen to those petrodollars.

Let me say that no one can describe how the intelligence community so skillfully, in fact, did develop that knowledge. But it did. And as a result we are a good deal safer. And I think, incidentally, the OPEC nations themselves are better off because of that process, since they, no more than we, wished a collapse of the international monetary structure.

Now that cannot be done in libraries, and even on a moral level—I am not sure I wouldn't rather have a technological gadget working for me than in every instance using human intelligence. I do know human intelligence has been the means by which nations have earned their security in the history of man, and I wish as much as anyone in this room, sir, that we lived in a kind of world which didn't require human intelligence, technological intelligence or any other. In short, I would like to see an open society like ours, a mirror for an open society that involved the world.

Chairman PIKE. Admiral would you like to comment?

Admiral RECTANUS. Yes; I would, sir.

I would make just one comment. This is not a problem, to my knowledge, of civilian versus military control of intelligence. What we are speaking of, and what I was speaking of, is the statutory responsibility which the Congress has given the Secretary of Defense. My personal view is that his voice, along with the Director General of Intelligence or whoever is finally at the head of this intelligence community, should be heard with the others.

Mr. CHERNE. May I address myself, Mr. Chairman, to that question? Chairman PIKE. All right.

Mr. CHERNE. Regrettably I have not had an opportunity to read the very important testimony the Admiral gave and his very intricately woven concept of reorganizing the intelligence community, and I regret, sir, I have only been able to capture part of it as I listened to you and listened to you intently.

I may misunderstand it, but I believe I find in it unnecessary and unwise efforts to fragment what is now the CIA. I worry, but not about the results of these investigations producing, as I am sure they will, better intelligence more efficiently produced, by means which wholly comply with the requirements of our Constitution. Those I see as the results of these undertakings. I do hope that change will not go beyond that, simply because we have got to do something, since if there is one thing I have learned in 40 years of looking at governmental action—executive and legislative—every time we repair something, we create new problems with the repair. Every revenue act that has plugged up loopholes has opened up as many new loopholes as those that were closed. I strongly urge that whatever recommendations are made for the restructuring of the intelligence community, only that amount be suggested which in fact is required to perform the purposes you have so well stated, Mr. Chairman.

Chairman PIKE. Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

I would like to say from the outset that the testimony that has been received here this morning has been the most constructive, objective and most important of any that I have heard during the history of this committee. I sincerely appreciate the effort that each of you gentlemen have put into your very excellent testimony.

I am particularly grateful for one very important point that has been made by both Mr. Colby and Mr. Cherne, and that is the fact that clandestine operations or covert operations and assassination plots and all of the other dramatic activities—which, incidentally, have received 99 percent of the publicity during these hearings—are only a minor part of the intelligence community's activities.

In all of the scandalous activities that have graced the headlines of our national press, wherein our intelligence agencies have been characterized as the heavies, one very important fact has not been noted by the press, and that is, all of these activities were either ordered by Presidents or Cabinet level officials, or the activities were carried out with the full knowledge and consent of these high-level officials.

It is clear in my mind that the intelligence agencies are taking the flak that should properly be placed on the political leaders who actually control and direct these agencies. Through its own negligence, Congress must also share full blame for these past sins.

With that statement I would like to put an end to our concentration on the past and move on to some really important business, and that is devising solutions. I would appreciate comments from each of you gentlemen on whether or not we should enact an official secrets act.

I personally am presently trying to write such a bill, and I would appreciate an exchange of a few ideas with you on that subject.

First, I feel that if such a law is enacted, it should contain very stiff penalties for unauthorized releases or revelations of official secrets once

the latter is defined. It should contain stiff penalties for unauthorized publication or broadcast of official secrets, and should have strict controls governed by need to know guidelines.

Now, in addition, I feel that the law must clearly establish these points.

First, there must be a formal classification system with clearly defined guidelines spelling out who can classify information, what can be classified, and who may have access to the information once it is classified.

Second, we must have a formal and continuous review system of all classified information.

Third, we must have an independent declassification system which could also serve as an appeals body for those who might disagree.

Now in this official secrets act, it would not be my intent to propose that it replace current administrative classification systems, but instead would cover a limited number of extremely important national secrets that are vital to the national welfare as determined by the classifying officials who would be of the highest levels.

Would you gentlemen give me your thoughts on that?

Mr. Cox, I certainly agree, Congressman Milford, that Congress long ago should have established control over classified information by statute. I don't agree that we need an official secrets act, if it is of the sort that the British have.

I agree with Bill Colby that we do not need it. I think that, in fact, that kind of legislation is incompatible with our constitutional system. I think the British Government does lend itself to arrangements of that sort, and they work effectively, but I would hope that we would not attempt any such legislation.

Mr. COLBY. Mr. Milford, I appreciate the chance to comment on this.

As you know, I am deeply concerned by the erosion of our secrecy, and the exposure of many of our legitimate secrets. I have no problems with the exposure of illegitimate secrets, because they should not be secret, but I do believe that the question of an official secrets act has to be looked at in the context of our Constitution. Therefore, my approach to it has been to impose the obligation on the people who consciously undertake this obligation by joining the intelligence profession or by assuming an obligation to keep secrets as a part of the administration through a secrecy agreement or other formal act, so that consciously they are on notice that they have assumed this obligation.

I would not apply it to the press, for example, because I think that would run into real conflict with our Constitution.

With respect to its scope, beyond that I think that we do need a procedure by which we can clearly identify what needs to be secret and determine what perhaps no longer needs to be secret, or what did not need to be secret, but was overzealously classified at one point.

I think there are problems in just how independent a review you can establish; without exposing very many of the reasons why a particular matter has to be secret itself. And you are apt to establish a large bureaucracy for that purpose.

I believe there are ways in which that could be conducted through the judiciary, and still control the secrets themselves. I have developed some recommendations along this line, which I believe have been submitted for your information and the committee's at various times.

They also came out in my testimony in the *Marchetti* case a couple of years ago. I think these would draw the necessary division between those secrets which are really worth keeping and which really should be kept secret on pain of punishment to the people who expose them, and our constitutional structure, which encourages that as much as possible be open.

Mr. CHERNE. Mr. Milford, first of all, let me thank you for having included me in that very valued compliment you paid those who testified this morning. I am so delighted to be included in it. It won't even ask whether or not it was intended in my direction.

Mr. MILFORD. It certainly was.

Mr. CHERNE. It was so warm to have it.

Mr. MILFORD. I want you to know it was.

Mr. CHERNE. However, it makes me feel ungracious, sir, to respond by opposing something to which you have obviously given so much thought. Nevertheless I must.

I could not possibly more emphatically oppose an official secrets act than I do. I just simply think it would produce an alteration of this society so profound as to make me wonder whether or not the intelligence which has been applied with a view to preserving our democracy did not finally and ironically, because it is leaked all over the lot, result in an alteration of that society, with a severe erosion of some of its vital freedoms.

It is not just simply that, in my view, the first amendment of the Constitution ought to be respected. It is that the first amendment of the Constitution is one of those aspects of our life which we ought to revere.

Does that mean, therefore, that there ought to be no inhibitions on those who obligate themselves to maintain secrecy, and then violate that obligation? Not at all. I am in total agreement with Mr. Colby's suggestion that the restraints are insufficient today to prevent the hosts of books written either out of passion or mercenary intention. I think that ought to be impermissible, and that the legal penalties ought to be sufficient to prevent them.

I can't make a judgment on the mechanism you have suggested. I have not given it sufficient thought. I do not see in it any inherent danger, and I see some possibility of correcting a very serious evil, but may I make one final remark?

In the final analysis, I think law and legal restraint are insufficient instruments to assure that secrets will be respected. I have already spoken of the absolute urgency of maintaining a free press, but with freedom goes responsibility. Law will not compel responsibility. A social compact is essential for that purpose. Somehow or other, in our common appreciation of the things we enjoy—and I address myself now to the press, to the media, to the Congress, to the Executive, and to the American people—precisely because of the freedom we enjoy, we ought to be far less ready to be irresponsible in our use of that freedom.

Admiral RECTANUS. Congressman Milford, I would associate myself with the philosophical thrust of Mr. Colby in working out this very serious problem at the source—those who have the information, not the press and others.

Chairman PIKE. Mr. Treen?

Mr. TREEN. Thank you, Mr. Chairman.

First of all, I would like to commend all of the members of the panel, all the persons who have testified today, for your contribution.

Mr. Colby, this may be your final appearance before this committee, and I would like to take this opportunity, as a member of this committee and as a Member of Congress, to commend you and to thank you for the service that you have rendered to this committee during its investigation and its hearings.

Second, I would like to thank you as an American for the service—the dedicated and professional service—that you have rendered to this country over the many years of your work in Government. I certainly hope that a way will be found, if you are willing, for you to continue to render service, be it advice or consultation or whatever. I hope that a way will be found for you to continue to give us the benefit of your long experience, your dedication, and your professionalism.

Mr. COLBY. Thank you very much, Mr. Treen.

Mr. TREEN. I guess like all, or most if not all, of the members of this committee, I am grappling with some fundamental and basic issues. We are addressing those today. Some of the issues that seem to me to be fundamental are questions such as what activities should this country engage in, either covertly or overtly; and then second, how much of our covert or secret activities should be revealed to the Congress; and then, third, how much should not be secret at all—that is, how much should be revealed to the public?

I have several questions along those lines.

First of all, Mr. Colby, do you feel that some of the activities that we have carried out in a covert manner we might just as profitably carry out overtly, given the fact that it is very difficult to keep covert activities secret, and given the fact that when they are revealed, serious questions are raised about the legitimacy of those actions?

Are there some instances in which maybe we ought to just go ahead and say we favor such and such side in a country, and go ahead and take sides? Does that raise the issue of Vietnam all over again?

Mr. COLBY. Well, there certainly are some things that can be done overtly that we did covertly. The best example of that today is the annual appropriation given by the Congress to Radio Free Europe and Radio Liberty. Those were started as covert operations in the days of the cold war.

—Had these been overt operations, I don't know whether they would have worked or been allowed to continue in the way that they did during those days, or whether they would have generated more of a crisis with the Soviet Union and with Eastern Europe than they did. But the fact that they were unofficial at the time allowed them to continue, without formal diplomatic pressures from the other side. They still continue today. There are certain pressures, but we have apparently been able to overcome that problem, and today we do handle those overtly.

In answer to your question, yes; there are operations that we did covertly in the past, perhaps for convenience, perhaps because it was easier and quicker, than it later proved necessary to do. But I think in this field, we must realize that much is determined by the diplomatic relationships between countries; that there are some things that nations

admit other nations do, but they don't want to be told officially that they are doing them, because then they are forced to take official cognizance of them.

This, of course, is what occurred when President Eisenhower, quite properly, felt it necessary to take responsibility for the flight of the U-2 over the Soviet Union. What had been an intelligence problem became a question between chiefs of state. Up until that time, using the cover story, they were going to show that it was wrong; they were going to show that the intelligence people were acting in a fashion that was in violation of the territorial integrity of the Soviet Union. But they did not have a major diplomatic problem. However, when we officially took cognizance by our President taking personal responsibility, which under our Constitution he pretty much had to do at the time—

Mr. TREEN. That canceled the trip.

Mr. COLBY. That canceled the Paris Peace Conference—the Paris negotiations, summer conference.

Chairman PIKE. The time of the gentleman has expired.

Mr. Lehman?

Mr. LEHMAN. Thank you, Mr. Chairman.

We are going to miss you. A good job well done.

A little over a year ago, a President was forced to resign because of alleged illegal activities—interfering with the democratic election process. We now have laws in this country about public disclosure of campaign contributions and such. I am troubled by any alleged past or possible future covert action taken to prevent the Communist Party from coming into power by democratic processes in other countries. Apparently the Soviets support Communist Parties all over the world. But I am wondering if it isn't better to combat it openly, even if it is counterproductive at first, rather than violate the very laws of this country by covert activities in the election process of other countries.

I realize that any overt action in the political process of another country may be originally counterproductive, but I think perhaps in the long run, dealing aboveboard lends a great deal more credibility to the moral position that I would like to see this country maintain, and regain where necessary, throughout the world.

In the committee's final report, I hope recommendations are included that will deal with this problem, as to what we do in the democratic process in other countries when we see it moving away from what we think is in the best interests of our people. Do we get down to the same level as the Communist countries, as the Communist supporters, in order to combat communism?

I am troubled by this, and I would like to get the response of the people here in regard to this perhaps moral question.

Mr. Cox. Mr. Lehman, I think I certainly agree with the thrust of what you are getting at. I spent a fair period of my life planning covert operations and running some. I do believe that you hit on the essential difficulty, which is that the Soviets have run these operations for years against us and our friends, and in trying to fight them, we felt that we had to use some of the same measures.

One of the obvious difficulties in overtly helping a political party with American money or publicity is that the political party can be hurt in the process, because the opponents will say that it is run by the

United States. That is really the central point of having so-called covert assistance which is not attributed to the United States.

However, as time has gone by, I think that we have learned a lot about that, and the real truth is that the Soviets have lost ground in most of the covert operations they have carried out. They are now one of the most hated governments in the world, because their programs, not just their covert programs but their so-called aid programs, have been used to manipulate and to attempt to control governments. One of the good things we decided to do was not to compete with them any longer in putting up aid programs.

I think the same is essentially true in the covert area—they are getting themselves into more trouble, for the most part, than they are gaining.

I do think that I share the views of the other gentlemen on the panel that we do need to have assets and a capacity to act in certain very special circumstances which will have to be unattributed to the U.S. Government. But those should be rare and far between.

Mr. COLBY. Mr. Lehman, thank you for those remarks. You do touch on the problem, really, of when it is justifiable. I think that my justification is the fact that there are occasions in which our sovereign nation should be able to help friends in a foreign country, or do other things in violation of the law in another country, such as intelligence gathering. These should only be used where they are really necessary.

I believe that this can be best determined by a system of approvals and supervision of this kind of activity, so that it does not develop a life of its own, so that it is subject to review in the executive branch in decisionmaking, and so that it is subject to review by the Congress. The Congress should keep up with it and, if it seems to be going too far and being used in unnecessary ways, the Congress has ways by which it can bring about a change in that policy, I am sure.

I think the answer to it is that in this world of independent sovereign nations, as Mr. Cherne says, it is essential to have this capability. But I agree with you that it should be used only where it is really necessary.

Mr. LEHMAN. Even the free election process.

Mr. COLBY. Even the free election process, because the free election process can be subverted by an authoritarian power. It was subverted in Eastern Europe. Once subverted by that authoritarian Communist Party, there is no second chance.

Mr. CHERNE. I associate myself completely with the comments which have just been made, and simply could add nothing to them which would in any way improve them.

Admiral RECTANUS. I would agree with that.

Chairman PIKE. The time of the gentleman has expired.

I would like to pursue this a little further. I think that I may be wrong—and if I am, correct me—but all of you gentlemen, I believe, would agree that in Chile we subverted the “free electoral process.” Is the distinction which is made between their subverting the free electoral process and our subverting the free electoral process, the fact that if they do it, there is no second chance, and if we do it, there will be another election?

Mr. COLBY. I guess I would be the best one to answer that question, Mr. Chairman. It is not that simple an answer. I think that in Chile

there was a subversion of the electoral process by the Communists, with outside Communist assistance from Cuba and from the Soviet Union. There was activity, according to the Senate report released last week. There was U.S. activity in support of the democratic parties and forces in that period.

Chairman PIKE. When they do it, it is subversion, and when we do it, it is activity. Is that——

Mr. COLBY. They use the same terms we do, Mr. Chairman.

Chairman PIKE. OK. All right.

Mr. COLBY. But they refer to it as support of their democratic——

Chairman PIKE. When they are talking about it, they call our efforts subversion.

Mr. COLBY. Right.

Chairman PIKE. And their efforts activity.

Mr. COLBY. Right, Mr. Chairman, no question about it.

Chairman PIKE. I think it is rather important that we all speak the same language and understand the language.

Mr. COLBY. I think there is one benefit, because when they refer to supporting democratic forces, I would contest whether that really is true, whereas when we say we were supporting democratic forces in Chile, I think that was generally true, with one exception, which was detailed in the report, where we consciously did go out and do something else. But I think the justification is not really that if the Communists win the election, there is no second chance. The question is whether it is in the direct interests of the United States in a foreign situation, whether it is of direct and immediate importance to the national security of the United States, that somehow this country remain friendly to us, rather than be hostile.

There are many elections around the world. There are many changes in government which do not impact directly on the interests of the United States and in which we take no role.

Chairman PIKE. I gather you are all agreed that there should be no official secrets act or the equivalent thereof and that our Constitution simply doesn't allow it.

Now, let's talk about freedom of the press. To what extent do you, Mr. Cherne, judge our press to be free when, for example, our Government tells it precisely what the Russians are doing in Angola, and tells it nothing about what America is doing in Angola? Is this a free press or is this a maneuvered press?

Mr. CHERNE. No; I believe it is a free press, Mr. Chairman. I think a free press is a press which is constantly badgered by all sorts of powerful entities. I think all kinds of efforts are made to affect, manipulate, move——

Chairman PIKE. Oh, yes, but what about where the Government is making these efforts to move and manipulate the press, where the Government is in possession of the facts, and says we will give you half of the facts, but not all of the facts. Is this your concept of a free press?

Mr. CHERNE. Yes; I must still say, Mr. Chairman. I understand you are unhappy with this answer, but it is my concept of a free press.

May I add that if ever there were a time in our history that this expression of dissatisfaction would seem somewhat illogical, it would be within these last few years. It does seem to me that for all of the efforts the Government has made to try to tell the press partial stories,



I do not think any of us conclude that somehow or other the press has been any less free to secure the whole stories.

Now, I think this is a free press. It is very, very different from the press in a country in which there are no alternative publications. I do not believe our press is obliged to just mechanically accept what government tells it. But I don't believe it is the responsibility of government, Mr. Pike, to be the objective source of all information, leading a press or people in whatever direction that information might take them. I think a government has the responsibility of governing. It must have a sense of its own purposes, its own directions, its own intentions.

I would say this to any political party. This has been true of every administration. It differs only in the degree of competence which has been brought to bear in this direction. I regret that at this particular time what most disturbs me is not that the Government is overwhelming either the press or the public, but quite the contrary. I might mention the most frightening thing I have read in, I would say, the last decade. The Economist of London, a very respected publication which has great admiration for the United States, devoted an entire issue a month ago to what it calls America's third century. I just want to read a brief observation from that issue.

Chairman PIKE. Is it a signed article or just an article?

Mr. CHERNE. It is the magazine speaking.

Two great empires have ruled the two centuries of industrial advance, the British from 1776 to 1876, the Americans from 1876 to 1976. But the Americans on the eve of their third century are showing the same symptoms of drift from dynamism as the British did in the end of their century. World leadership is, therefore, liable to pass into new hands. Quite early in the century 1976 to 2076 America's contribution in its third century will depend largely on how its main institutions evolve in or out of pace with the changing times. These three institutions are its business corporations, its government, and its mechanism for living together.

Chairman PIKE. Mr. McClory.

Mr. McCLODY. Thank you, Mr. Chairman.

On this general subject of the press I would say that I hope the press would not rely on Government to provide information both about itself and about its enemies, but would remain free to get its information from the source, or from perhaps the place where the conflict is occurring.

We certainly have that kind of freedom today. So neither would I want to have the Government impose any kind of censorship with respect to news about the enemy or about itself.

But I think that we recognize that in this whole field of intelligence, there is an element of secrecy; otherwise we would not have this investigation at all. Considering that the element of secrecy is involved in the area of intelligence, I think it would be quite unfair to criticize the Government for secrecy with regard to subjects on which we charge the Government to impose secrecy.

Mr. Colby, in an earlier discussion here it was suggested that—even though the Congress did not give you directions nor authority to carry out your duties in a particular way—maybe you should go beyond what the direction of the Congress was and assume some position which would be more appealing to some Members of the Congress and perhaps some of the public.

Actually, it seems to me that if the Congress wants to prohibit you from carrying out certain activities or wants to authorize or direct you to carry out other activities, it is our responsibility to either provide that prohibition or that direction. Doesn't that follow up what you said earlier?

Mr. COLBY. It does, Mr. McClory. I do recommend, of course, that our country have the capability for these kinds of actions. I also recommend a procedure by which we make the decision to do them with some care and with the knowledge of representatives of the Congress as well as the executive.

Mr. McCLORY. I would like to have your comments, if it is possible, with respect to the advisability of a joint committee or separate committees of the House and the Senate. But before that, I would like to ask Mr. Cox this one question.

In your article, you recommend that we get more speculative information from our foreign missions and that they be more active in providing suggestions or options.

It seems to me the problem that is inherent in your recommendation is that if at some stage we are going to expose to public view and examination this speculative reporting which comes from our foreign nations, we are going to do more to discourage that kind of activity than we could possibly encourage by writing articles or by giving directives.

So it is important, is it not, in connection with executive activity and particularly in the field of intelligence, to guard the confidentiality of speculative reporting and recommendations?

Mr. Cox. Yes; I certainly agree with that point. I think confidentiality is an important part of all kinds of enterprises and especially effective government. Having said that, I think there is a great deal of difference between confidentiality and classification of information to maintain what we call secrecy. That is an important distinction, I believe, and one of the reasons why I think that the Congress should deal with this matter of classified information as it has done so effectively in the Atomic Energy Act for restricted data. This distinction needs to be made.

The opinions of a U.S. Government official must be confidential to have an effective way of operating. But there is confusion today between opinions of Government officials and what we call classified information. This is just one part of an important need for Congress to control classified information by statute.

On the business of speculative evaluation, I do feel that our Government has not given enough emphasis to the training of senior officers to serve abroad who are looking at economic, political, and military problems and reporting as speculative evaluators, which I was talking about as a national estimating function. This, to me, is a central part of the most important function of intelligence.

Chairman PIKE. The time of the gentleman has expired.

Mr. Milford?

Mr. MILFORD. Thank you, Mr. Chairman.

Gentlemen, I would like to pursue what I gathered from your answers. You are really saying, I think, the same thing I am trying to say. Perhaps where I am getting in trouble is due to my nonlawyer status. While I use the term "official secrets act," apparently that,

means something else in law I am not completely aware of. My profession is a meteorologist and in all honesty they didn't teach me a lot of law in weather forecasting school, so I would like to go back through this again.

We have all agreed that some national secrets are vital to the welfare of this Nation. Putting it another way, deliberate release of information would violate society, in my way of thinking, the same way as murder or rape or any other crime.

Now, our Constitution provides for Congress to enact laws against murder and rape, and therefore, surely there must be some way under our Constitution to prohibit the willful disclosure of national secrets that would damage our society.

Now, let me again restate what I am trying to do—write what I call a national secrets act. We might give it some other name if it makes anybody happier.

One, I want to devise a system that would positively identify those secrets which are vital to the national welfare, or, putting it another way, identify those secrets that if released, would hurt society. I want a system that continuously monitors the status of these secrets to insure that as long as they are classified as national secrets, positive danger to the Nation would result if they were released.

Then I want an independent review group to act as a check and balance: first, to check abuses in classifying them originally; and second, to act as an appeals body so that if someone disagrees with that classification, he has some forum in which to air that disagreement.

Now, once a secret has been properly determined to be vital to the national welfare and legally classified under this act, how then would a violation of the act differ from murder or rape?

Let me go a little further. We have talked about press. If an author, newsman, or Member of Congress should accidentally or covertly obtain a national secret, the release of which would clearly damage our society, and if he knew that it was an official national secret and nevertheless published or broadcast it, are you gentlemen telling me that a penalty for this would violate our Constitution?

Mr. COLBY. I am not a practicing lawyer, either, Mr. Milford. But I think the interpretation is generally that it would be a violation of the Constitution to impose that requirement on a newsman. I don't think the Constitution would require that kind of a punishment in the case of a Government official who undertook the obligation to keep it a secret, although I think that would be quite appropriate.

Mr. MILFORD. Under our Constitution, could that man be called before a judicial council and be forced to say where he obtained the information?

Mr. COLBY. You are in the finer points of the relationship with the judiciary.

Mr. MILFORD. Could such an act specify that in such a case that would happen?

Mr. COLBY. Yes.

Mr. MILFORD. Would that be constitutional?

Mr. COLBY. I think that could be constitutional, yes.

Mr. MILFORD. I am not angry with the press. I carried a press card myself for some years. But I am very, very disturbed about irrespon-

sible press. This is exactly what we are talking about in this particular instance.

Mr. COLBY. There are laws in certain of the States—not all of them—but certain of the States that allow a journalist to refuse to reveal his source. I don't think this is a constitutional question, however, even to a judge.

Mr. MILFORD. I agree with that, because in many instances it is important to the journalist not to reveal his source.

Chairman PIKE. The time of the gentleman has expired.

Mr. Treen?

Mr. TREEN. Mr. Colby, with regard to SALT and the limitation on arms, given the closed nature of the Soviet society, can we expect to have any meaningful and effective arms limitation agreements—and by that I mean agreements which will be carried out—without a highly covert intelligence activity both within the Soviet Union and around it?

Mr. COLBY. With respect to certain of the weapons systems, this could be done without a covert intelligence-gathering apparatus. You could do it by what is called national means or some of the technological ways of monitoring because you can count on being able to see or sense the characteristics of certain weapons systems well enough. There are certain other weapons systems, however, which are very difficult to monitor precisely by those technical means.

Mr. TREEN. Quantitatively, isn't that becoming a greater problem as the technology improves?

Mr. COLBY. It is indeed becoming a greater problem. In order to monitor those kinds of weapons systems you really, I believe, have to develop covert intelligence techniques to be able to assure your Government that the Soviet Union is complying with the restrictions they assumed.

Mr. TREEN. Getting to the question of disclosure and congressional oversight, as I understand your testimony, Mr. Colby, there are different degrees of confidentiality that should be maintained; certain information may be made public, other information can be revealed to the Congress. What can be disclosed to Congress without a risk of disclosure which in your estimation would be damaging to the activity? What kind of activity can be disclosed to Congress and what is the risk of disclosing it to Congress?

Mr. COLBY. Well, we do disclose our appreciation of foreign situations and our evaluation of an international situation to the various committees of the Congress. We have testified before the Space Committee, before the Agriculture Committee, before the Foreign Affairs Committee, and before various other committees of the Congress, in which we have used our sensitive intelligence in order to provide our appreciation of what is going on in some foreign country.

I believe that there are complications in the Congress as to the Congress own arrangements for protecting the confidentiality of testimony.

Mr. TREEN. Are you talking about risk of leaks by Members of Congress and/or committee staffs?

Mr. COLBY. I am. I must say here, Mr. Treen, that I am not about to throw the first stone at Congress on the question of leaks because I

think that this is something that we in the executive branch have as serious a problem with as the Congress does.

Mr. TREEN. You don't have to tread lightly as far as I am concerned.

Mr. COLBY. No; but it is clear that the Congress does not have the kind of structure which facilitates an understanding as to how confidential material is to be handled and how the release of such material can be worked out between the executive branch and the Congress.

This committee, thanks to your chairman, does have such an understanding as to the public release of material given to you. But we do not yet have that kind of arrangement with the rest of the Congress.

I think if we are going to make this classified information more generally available to the Congress, we maybe should put some thought into this matter.

Mr. TREEN. Let me ask you this question: I think I asked the question in a somewhat similar way before, but in a different context. Let's assume the world knows every activity we carry on, every covert agent that we employ, and that the activities and the identities of the agents will be revealed to 100 Senators and 435 Members of the House, plus some staff. Would this have any effect on your intelligence activities or your intelligence gathering?

Mr. COLBY. We have had a lot of conversations around the world with foreigners and with agents. They have asked this question: "Is my name going to be revealed?" They were frightened of it and indicated that they would have to quit.

We have said that these investigative committees of the Congress are investigating us fully at this time, but we have an arrangement by which we are not revealing the names of our agents that the committees have accepted.

We have been able to cooperate with this investigation, I think, by letting the committees know what they need to know while still protecting the identities of those people whose lives and livelihoods would be at risk unless that were done.

So the basic answer is that we must have an arrangement with whatever oversight committee or investigative committee we have in the future by which certain things won't be required by the committee unless there is some extremely important reason why the committee needs to know them; that in the normal run of things we will not disclose specific identities but we will disclose activities, general programs, and things of that nature.

But even then, we will not disclose information to more than a limited group of Senators and Congressmen. The final outcome of the intelligence—the substantive product—will be discussed rather broadly, but the sources and techniques by which it is obtained will only be discussed with a small number of Members of Congress.

Mr. TREEN. My time has expired.

Chairman PIKE. Mr. Field?

Mr. FIELD. I thank you, Mr. Chairman. With all due respect to the other witnesses, I would like to ask some questions of Mr. Colby because I expect this will be the last chance that we have to converse this way.

I would like to talk about the broad issue of CIA involvement in paramilitary activities, with some reference to the reports about Angola.

The other day in a closed session of the committee, the staff reported on its review of all of the covert action minutes that we had seen at the White House—the review of the 40 Committee minutes.

You attended that briefing. That briefing seemed to indicate to me and to Mr. Dellums—who asked you a question about it—that in the last 10 years, there has been a significant level of activity in third world countries.

Then, in response to a question that I asked you about successes, since we were then in closed session, you began—as you did many times before—with the long litany of Western Europe after World War II.

I pointed out that there is a whole generation of Americans now—some of whom are approaching middle age—people who are now taking their place in society and were not even around when Adolph Hitler was running things and don't remember Joseph Stalin.

I was very skeptical that the world has changed and the policy-makers have not. They still view "Communism" with a capital "C" and only as the type of communism which exists in Russia—as the great bear. It seemed to be our justification for covert action in Communist countries.

I think the failure, perhaps, to change with the times—and people under 35 still vividly remember the trauma of the 1960's—means that we undertake projects that are no longer sensible.

In light of that, and in light of the reports about Angola, do you honestly think that the CIA can continue to get this country involved in paramilitary activities in other small nations in the third world and have that involvement remain secret?

In other words, do you think it is wise for the CIA to continue to do this kind of thing?

Mr. COLBY. Well, Mr. Field, the definition of middle age is, of course, always one's own prerogative. But that aside, I think that there was a debate about communism many years ago, which went over the question of liberation or containment. We settled on containment. There was some debate as to whether this was the right thing to do.

I think it reflected, really, the elimination of the ideological aspect of the question and its replacement by the question of the degree of interest by the United States when facing a hostile power, whether it is Communist, nationalist, imperialistic or any other.

I think that we are not talking about ideologies. We are talking about the interests of the United States in remaining free and remaining unimpeded by other countries.

Mr. FIELD. But how does having the United States in Angola help us to stay free? Haven't we learned from Vietnam that it doesn't pay for us to get involved in what are nationalist movements? And isn't it a black nationalist movement in Angola? What business of ours is it? Will the Russians win anything if they manage to stay there and we don't? Did we learn anything in Egypt? Why are we doing these things?

Mr. COLBY. I am not allowed to talk publicly about our operations, if there are any, in Angola, but I can still continue the debate, I think, satisfactorily.

In the first place, I think I must argue that the CIA is not going to unilaterally engage our Nation in some involvement. The CIA is perhaps going to suggest some involvement in some part of the world but our Nation is going to be involved only pursuant to the decision-making processes of the Executive. And the appropriate committees of the Congress will be informed.

The CIA will do the job. That is its job. That is what it was set up to do.

Mr. FIELD. If the CIA gets us involved, Congress can't function properly. On the other hand, if war was being declared, Congress could debate it publicly. But if it is CIA, Congress couldn't tell anybody because it is a secret.

Consequently, the public does not get a chance to express its view on whether we should be involved in these third world nationalist movements.

Mr. COLBY. Well, I believe that this question was faced during consideration of the War Powers Act, when it was consciously decided not to apply the War Powers Act to paramilitary activities. I think that the question of whether our country should conduct paramilitary activities was considered in the context of whether we should be barred from any such covert paramilitary activities.

Both Houses of Congress voted that down. They then approved a procedure by which we would conduct them if we were to conduct them. We are following that procedure to the letter.

Now, the second overall strategic question, of course, is, to what degree is it in the national interest to engage in some covert paramilitary activity? I think Vietnam is a good example because the key to Vietnam was a massive military engagement of U.S. military forces. That really was the critical part of the Vietnam conflict. We responded there with massive military force, which is what led to the frustrations about Vietnam.

But there are situations around the world in which some degree of covert paramilitary assistance can reduce to a low level the threat of a great power in an unfriendly area and the growth of Soviet power in certain areas.

If you see the Soviet Union deliberately trying to expand its power into some part of the world, you must make an evaluation as to whether or not that is of concern to us.

In some cases, I can imagine it would not be of great concern to us. We do not have knee jerk reactions to every expression of a Soviet KGB officer around the world when he wants to do something in a country.

But when it becomes a clear case of trying to overpower other forces in that country by people who are trained, armed, and equipped by the Soviet Union, by people who are given technical advice, assistance, and technicians by the Cubans, then you begin to wonder what is the long-term view of the Soviet Union as to its potential role there.

You could say that we can do nothing and it may go away. And you might be right. But is it more prudent for the interests of the United

States to make some modest effort in that situation or do nothing. That is a value judgment, and we have a procedure by which we can make that value judgment. In certain circumstances there can be a positive answer to the question.

Mr. FIELD. My time has expired.

Chairman PIKE. We have a couple of questions which we will forward to you, Mr. Cherne and Mr. Colby. These are from Mr. Kasten who was here earlier and had to leave.

Chairman PIKE. This may or may not be, Mr. Colby, my last chance to speak to you. I am not asking any questions; I am just kind of wrapping this up.

I would like to say that I sort of regret the fact that this will be our last exchange, not so much on my behalf as on yours—because I have an uneasy feeling that the duration of our committee and of its counterpart committee in the Senate may have some bearing on your duration as the head of the Central Intelligence Agency and as the Director of Central Intelligence.

I think that this is rather sad because I have a disturbing feeling that what is going to be done in the name of reform—and was once done and suddenly reconsidered—is your departure which would come after all of these investigations have been concluded, and therefore might appear to be, in some manner, a change of policy—a new face and all that.

I do think that if anyone either seeks to blame William Colby for the errors of the past or believes that his departure is going to improve things in the future they are, to say the least, greatly oversimplifying the problems which have occurred and which still go on.

We have disagreed about many issues. I think that you have done the best possible job you could have done in your role, to make some reasonable adjustment between the need for secrecy, the continuation of your agency and the constitutional requirements of the United States of America.

I would like to close this hearing with some of the thoughts I mentioned when we began.

First, it was my intention or my hope that we would be able to walk between what I described as paranoia on the left and indifference on the right.

I think we have managed to do that. We have tried to do that. Many of the philosophies of America are present on this committee and all of them were given very free rein.

Finally, I would like to close by reminding the world once again that in no other nation could this investigation have taken place.

Mr. McCLORY. Mr. Chairman, I am sure anything I say will be anticlimatic to your very eloquent remarks but I would, as the ranking minority member of this committee, state very definitely that I feel the very constructive work which I feel the House Select Committee on Intelligence is capable of performing and is performing is, in large measure, due to the kind of cooperation and the kind of help which you, Mr. Colby, and the agencies under your direction, have been able to provide this committee.

I am confident that we are going to see a strengthened intelligence community as a result of these hearings and our recommendations, as well as the thorough investigative capability that we have been able to



enjoy, largely through the kind of cooperation that you have provided to us.

I certainly want to commend you, Mr. Chairman, on your remarks, and to endorse them and express my appreciation to all the witnesses who have appeared before us, but particularly to you, Mr. Colby.

I think this is about your 45th appearance before a House committee in the course of these last few months. I hope we don't have occasion to call you back again, but we will be taking very careful note of the information that you presented to us today.

Mr. COLBY. Mr. Chairman, may I say a word? There have been very many nice things said by you and by others here today.

I think some of them are probably more flowery than are appropriate. But I do want to say that when we started this set of investigations, there were an awful lot of people in the intelligence community who were really very frightened at where they might go and at what they might do to our intelligence apparatus.

I think that people were traumatized sometimes by the things that had to be revealed and they were concerned about the security of the committee and the staff.

They were concerned by the problems of educating the committee and the staff to the very complicated intricacies of our business.

We had some good fights about it in the process. Sometimes we have won. But I think that we in the intelligence business have all been impressed with the integrity with which the committee has done its work, with the obvious effort to do a serious job, and with your focus on the serious questions about intelligence that needed to be answered.

I think the whole thing, from our point of view, has been of major assistance in bringing intelligence into the American Constitution in a fashion that was never even worried about before.

I think we have been able to do it and we have been able to protect the necessities of intelligence. We will see what you recommend in your report. We may continue to struggle and fight about that in the future, but I do want to say that it has been a great satisfaction to me to watch the workings of the constitutional process through the responsible work of you Americans and the rest of the Americans in the intelligence community.

Thank you.

Chairman PIKE. On that note, the Select Committee on Intelligence will stand in recess subject to the call of the Chair.

[Whereupon, at 3:48 p.m., the committee recessed, subject to the call of the Chair.]



## INTELLIGENCE CONCERNING THE SALT I ACCORD: II

WEDNESDAY, DECEMBER 17, 1975

HOUSE OF REPRESENTATIVES,  
SELECT COMMITTEE ON INTELLIGENCE,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10 a.m., in room 2212, Rayburn House Office Building, Hon. Otis G. Pike (chairman), presiding.

Present: Representatives Pike, Dellums, Murphy, Aspin, Hayes, Lehman, McClory, Treen, Johnson, and Kasten.

Also present: A. Searle Field, staff director; Aaron B. Donner, general counsel; Jack Boos, counsel; Gregory G. Rushford and Emily Sheketoff, investigators.

Chairman PIKE. The committee will come to order.

Last week I announced that we would have an additional hearing on the matter in which intelligence relating to possible SALT violations is handled—provided we got certain documents declassified. The documents have since been declassified, to at least my satisfaction, although there are portions deleted from them.

I just want to state for the record that I am going to be rather tough on our jurisdictional limits today. It is not the jurisdiction of this committee to determine whether or not violations of the SALT I agreement have in fact occurred. That is not within our jurisdiction. It is not in our expertise. What is within our jurisdiction is how intelligence is handled.

If the members of the committee make any great effort to get into the substance of SALT violations, I am going to cut them off because that is just not within our jurisdiction.

Our first witness today is Mr. Edward W. Proctor, Deputy Director for Intelligence for the CIA.

Go ahead, Mr. Proctor.

### STATEMENT OF EDWARD W. PROCTOR, DEPUTY DIRECTOR FOR INTELLIGENCE, CENTRAL INTELLIGENCE AGENCY

MR. PROCTOR. Mr. Chairman and Mr. McClory, I provided the committee with a prepared statement yesterday which I have since modified somewhat to make it more readable and more specific.

By way of introduction, I believe it would be useful for me to describe the role of the intelligence community in monitoring Soviet compliance with strategic arms limitations agreements.

The role of intelligence is to monitor Soviet activities relating to the SALT agreements and to report the facts and assessments of these

activities to that part of the National Security Council structure—the Verification Panel—which is responsible for SALT. The judgments as to whether a violation may have occurred, however, are made by the NSC Verification Panel for consideration by the President.

The Director of Central Intelligence has overall responsibility for guidance to and supervision of all intelligence collection and analytical activities required in the monitoring and reporting process.

In June 1972, the U.S. Intelligence Board established a Steering Group on Monitoring Strategic Arms Limitations to serve as the focal point for this activity. The steering group is chaired by the Deputy Director of Central Intelligence. The other members of the group are the CIA Deputy Director for Intelligence, the Director of the Defense Intelligence Agency, and the Director of the Bureau of Intelligence and Research, Department of State.

Its responsibilities include the evaluation of the effectiveness of intelligence collection and analysis for monitoring, the preparation of periodic reports on the status of Soviet compliance, and the analysis of information related to possible violations of the SALT agreements or other anomalies.

In practice a working group of representatives from the intelligence community prepares the regular monitoring reports for review and approval by the steering group. When approved, they are forwarded by the chairman of the steering group through the Director of Central Intelligence to some 20 policy-level officials, including those on the NSC Verification Panel.

Mr. Chairman, with this as background I would like to describe how intelligence related to compliance is handled by the CIA prior to and, in some cases, concurrent with consideration by the USIB Steering Group. Information from collectors of intelligence is regularly passed to those intelligence analysts in the CIA who normally deal with a specific subject or activity. These analysts are familiar with the provisions of the arms control agreements, and readily recognize Soviet activity related to compliance. They immediately report this activity to senior intelligence officials who, in some cases, decide to limit the distribution of these items by putting them in what is called a "hold status."

What is a "hold" item and why is certain intelligence information placed in this category?

A "hold" item is intelligence which is not included in normal intelligence publications but is given very limited dissemination to named recipients on a strict need-to-know basis. The recipients of intelligence on "hold" items are determined by the subject matter, the sensitivity of the intelligence and the source from which it was derived.

The withholding of an intelligence item from normal dissemination and publication is not new. An earlier example occurred in October 1962 at the time of the Cuban missile crisis. Given the extreme sensitivity of the information on Soviet emplacement of missiles in Cuba and the critical international situation that resulted from this activity, the intelligence on the missile build-up was shared with a very few named individuals in the Government.

Intelligence on SALT compliance is put into a "hold" status for three principal reasons: First, the meaning of new information may not be

clear and its dissemination is limited, awaiting further analysis or more definitive information.

Second, there has been a growing rash of security leaks of highly sensitive intelligence information. These leaks not only jeopardized on-going diplomatic negotiations but also created grave compromises of the extremely vulnerable and reliable sources of this intelligence.

Third, certain understandings were entered into by the United States and the Soviet Union. One was to restrict most closely any public statements on subjects being actively discussed in the SALT negotiations, in diplomatic channels or by the Standing Consultative Commission concerning compliance.

The procedures for putting an intelligence item into "hold" status and disseminating this information are fairly simple.

Upon notification of the receipt of an item of information that may be of sufficient sensitivity to consider its being put into "hold" status, I or my deputy consult with senior officials in the Defense Intelligence Agency. When appropriate, we recommend to the DCI that the information be put in "hold status."

The information then placed in "hold" status is withheld from all normal distribution channels.

The CIA intelligence experts concerned with the subject matter, in consultation with representatives from the Defense Intelligence Agency, analyze the information and then prepare a memorandum reporting the item and discussing its intelligence significance.

As a general rule, this memorandum is forwarded by the Director of Central Intelligence to the Assistant to the President for National Security Affairs.

The memorandum says that the item is being withheld temporarily from publication or further written dissemination.

It also seeks his guidance on how this item is to be handled and, on occasion, also recommends when the item should be published.

The advice from the Assistant to the President for National Security Affairs may include a request that additional designated officials in the Government be informed of the item, or may give instructions on when it is to be released from "hold" status. His advice on the disposition of "hold" items is usually provided orally.

Once a decision has been made that the item may be published, it is usually handled as a routine item in intelligence publications.

Who else is informed about "hold" items? Copies of the DCI's memorandum to the Assistant to the President for National Security Affairs are sent to the Secretary of Defense, and the Director of the Defense Intelligence Agency. On some occasions the memorandum is also sent to the Director, INR, in the Department of State, or the fact that the item has been put in "hold" status is communicated to him orally.

It is the general practice in the Department of Defense upon receipt of these "hold" memoranda that the Director, DIA or his representative will brief the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Director of the Joint Staff, Department of Defense SALT Task Force Director, and the U.S. Deputy Commissioner for the Standing Consultative Commission. In some cases, Service Chiefs and Assistant Chiefs of Staff for Intelligence also receive the briefing.

In the Department of State, upon receipt of information on a "hold" item, the Director, INR, usually briefs the Deputy Secretary of State.

Mr. Sidney Graybeal, U.S. Commissioner, Standing Consultative Commission, is informed orally of all "hold" items by the Chief of CIA's SALT support staff.

On a number of occasions, the CIA Deputy Director for Science and Technology, has briefed designated Members of Congress on these "hold" items.

In addition to informing those senior officials who really need to know the information being kept in "hold" channels, our procedures also insure that those at the working level within the CIA are fully informed. For example, in the case of our most recent "hold" item, a total of some 75 individuals within the Agency were informed of this information. This number included, of course, the senior levels of the CIA, as well as those responsible for insuring that our publications were not inconsistent with the information in "hold" status. More importantly, just over half of these individuals were intelligence officers who had direct and immediate responsibility for keeping informed and reporting on the subject matter of the "hold" item.

That completes my prepared statement. I will try to answer any questions which can be discussed at an unclassified level.

Chairman PIKE. Thank you very much.

Our next witness will be Mr. Ray Cline who has appeared before in the past.

Please come up to the table, Mr. Cline, and give us your statement.

**STATEMENT OF RAY S. CLINE, EXECUTIVE DIRECTOR OF STUDIES  
CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES,  
GEORGETOWN UNIVERSITY**

Chairman PIKE. It is my understanding, Mr. Hyland, that you do not have a statement. Is that correct?

Mr. HYLAND. That is correct.

Mr. CLINE. Thank you, Mr. Chairman, Mr. McClory.

The committee suggested that I come this morning because I was a member of the U.S. Intelligence SALT Monitoring Group at the time this system was inaugurated, along with Mr. Proctor.

The conclusion of the SALT I Arms Limitation agreement obviously called for an important procedural innovation—the establishment of a system of monitoring compliance or noncompliance with that agreement. One was set up under the U.S. Intelligence Board as Dr. Proctor has outlined. I was one of the members at the time. The Director of the Defense Intelligence Agency, then Admiral de Poix, was also a member.

The difficulty which we encountered immediately in devising a system for insuring adequate monitoring of Soviet compliance or non-compliance with the agreement lay in great part in the nature of the package of agreements which are usually called SALT I collectively. This package has what I call the "layered look" in diplomacy, an invention which became more popular as time went on and characterized in particular the Vietnam Peace Treaty, of dubious repute, a little later.

It is a kind of agreement in which some very broad general ideas are written down and then a series of interpretive statements are made separately about the agreement. In this particular case there are six layers to the package, namely, using the language that was used at the time in presenting this material to Congress—the ABM treaty; an interim agreement; a protocol; two kinds of agreed interpretations; one initialed and one not initialed but said to be commonly understood; and then a series of unilateral statements by the United States as to what it understood the whole agreement to mean. I think you can easily imagine that this made the SALT I package very difficult to monitor and to deal with evidence as to compliance or non-compliance.

In my view, this type of international agreement is virtually impossible to monitor definitively as to its precise degree of effectiveness. Unilateral and quasi-agreed interpretations only vaguely resolved very important ambiguities in the treaty such as the size of a heavy ICBM, the extent of permission for the continuation of existing concealment practices and, particularly, the extent of permissible enlargement of the silos.

Another important ambiguity was the degree to which mobile missile development was permitted.

These ambiguities came largely from the fact that principles in the treaty were very vague and that the definitive statements presented to the U.S. Congress were in unilateral statements which the Soviet Union did not endorse.

Now the SALT monitoring group nevertheless tried to determine precisely the intelligence bearing on all these provisions, unilateral and agreed. The small group Dr. Proctor described handled the matter very discreetly on a very close "hold" basis in order to avoid leaks, and distribution was made only to the highest level officials in order to avoid leaks. Only 15 were on the distribution list.

Now, the Assistant to the President for National Security Affairs at the time, took complete control of this monitoring process. He noted that the USIB should monitor, but that it should reach no decision on compliance or violation. He directed that consideration of this matter be reserved for the Verification Panel, as Dr. Proctor described. Of course, the Verification Panel of the NSC is a subcommittee directly under the chairmanship of the same man who worked out the SALT I package, the assistant to the President.

The Assistant to the President for National Security Affairs also requested the Director to institute this "hold" system, described by Dr. Proctor, in other words, to agree not to disseminate raw intelligence constituting prima facie evidence of violations of the SALT I agreement but instead to reserve that information for a period of time to the verification panel, in other words, principally to the members of the NSC staff under the direct control of the assistant to the President.

As you know, my period in Government ended in November 1973 when I resigned. But during those months of 1973 when we were discussing the SALT monitoring process, the hold system became quite troublesome to me in my capacity as Director of Intelligence in the Department of State.

I trust you noted in Dr. Proctor's statement that the Secretary of State, then Secretary Rogers, was not on the list of people entitled to receive "hold" information. I surely need not call your attention to the fact that a period of several weeks or a month in which certain people in the Government and in the intelligence community knew about evidence which might suggest a Soviet violation, or at least a different interpretation of the SALT agreements from those which had been adopted here in Washington, constituted a certain danger for our security and the conduct of our foreign policy. It is a long time for strategic intelligence to be held, in my view, especially from the Secretary of State.

Now I agree with Dr. Proctor that it is entirely appropriate for intelligence of national significance to be held briefly while interpretive analysis in the intelligence community takes place. I do not, however, believe that when prima facie evidence of that kind exists, the Secretary of State should be unaware of it. At the time I urged that this "hold" system be abbreviated in time and that it not be restricted to the exclusive control of the Assistant to the President for National Security Affairs.

My conclusion about the SALT I monitoring procedures which you have just had described, as they were being followed in 1973 when I participated, was that those procedures were unlikely to reveal either compliance or violation definitively, partly because of the vagueness of the agreement but also because of reluctance to let the evidence be discussed at the Cabinet level, that is, the NSC proper, rather than at a subcommittee staff level; and particularly because of the system of private, secret feedback of discussions between the Soviet Government and the U.S. Government through the so-called Kissinger-Dobrynin channel where this prima facie evidence of possible Soviet violations were discussed prior to informing other high officials in the U.S. Government of the existence of that evidence.

I took particular exception to the exclusion of the Secretary of State.

My further conclusions are that in the system the Director of Central Intelligence was relegated to a secondary or tertiary staff level in the Government because he did not have direct access to the President but was getting orders either from the Assistant to the President or the NSC staff about what to do with important items of intelligence.

My own impression is that that is contrary to the National Security Act of 1947, which gives rather important responsibilities in the evaluation of intelligence to the Director of Central Intelligence. The DCI lost control over the responsibility for evaluation of this important evidence relating to national security.

Thus the basic-structures of the intelligence community's responsibility and accountability were warped in these ways, contrary to the National Security Act of 1947, and, in my view, against the principles of good national decisionmaking. A single policymaker ended up controlling dissemination and analysis of intelligence, and yet intelligence provides the only possible basis for judging the wisdom of policy.

These facts plus other aberrant behavior patterns in the use of the central intelligence system in the past 5 to 10 years suggest that some remedies are needed in the operation of and guidelines for the handling of strategic intelligence.



I hope this committee is going to address itself to these basics of the intelligence process. We have heard a great deal from many sources about the mistakes in and the aberrations of intelligence performance.

I would like to make some specific recommendations for your consideration as to how to insure that our intelligence system works at a high level of effective performance. I think that depends a great deal on how intelligence is made available to the senior level of policy-makers in our Government.

You may remember when I appeared before the committee before I said if the intelligence community cannot do its job well, the country is in trouble. That job to which I was referring I described as the work of a highly professional, sophisticated, strictly objective intelligence research and analysis capability. I said that it should operate at a high level in our national decisionmaking process with appropriate free access to the members of the National Security Council and to the President.

You may remember I said, "If the intelligence community cannot do this job well, the country is in trouble."

In addition to the other points which I then offered as recommendations, I wish to conclude today with outlining a few general principles that should be reflected in legislation or administrative guidelines governing the structuring and operations of an effective national intelligence within the framework of our free society.

Mr. Chairman, if you prefer, I would be happy to let the four or five pages of my testimony on these precise recommendations for structuring the intelligence community be inserted into the record.

Chairman PIKE. Without objection they will be placed in the record at this point.

I appreciate your offer, Mr. Cline. I assure you that both the members and the staff will seek very diligently to digest them in the process of formulating our report. But I think that for our present hearing, they are not exactly what we are after. I do appreciate them nevertheless.

Mr. CLINE. I understand that.

[Mr. Cline's prepared statement and recommendations follow:]

#### PREPARED STATEMENT OF RAY S. CLINE

The package of official documents usually called SALT I constitutes a confusing group of supposed limitations, many of them difficult to monitor and the whole virtually impossible to enforce. The only sanction for enforcement is abrogation of the treaty or agreement, a drastic move our policymakers naturally would be reluctant to take except in extreme danger.

The treaty on ABM was relatively easy to negotiate because neither side wanted to spend \$30-50 billion on a new comprehensive system. The U.S.S.R. had a rudimentary system protecting its national capital and did not want to spend the money necessary for a nationwide system. The United States had superior technology for a nationwide system, but it also wanted to save money and so sacrificed its technology lead to get the U.S.S.R. to agree not to build a system it did not want.

The agreement gave the U.S.S.R. a 3-to-2 superiority in land-based missile numbers and a clear lead in SLBM's. It left the United States with a substantial lead in warheads, which the U.S.S.R. could not in any case have overcome in the 5-year period of the agreement. The agreement contains some serious definitional problems, for example, as to the size of a "heavy ICBM" and permission for continuation of existing concealment practices, not new ones.

Unilateral and quasi-agreed interpretations only vaguely resolve these ambiguities and in some cases add to them. These are mainly declarations by the

United States of compatibility and incompatibility with the agreement; for example, mobile missile development and the extent of permissible silo enlargement. The U.S.S.R. is uncommitted legally to any of these unilateral interpretations so it is virtually impossible to demonstrate violations.

Recognizing the importance of Soviet compliance with or violation of the letter and spirit of the SALT I package, the U.S. Intelligence Board (USIB) promptly sat up a SALT Monitoring Group. This group was made up of only the highest level of analytical intelligence officials. They were Messrs. Walters, Deputy Director of Central Intelligence (DDCI); Cline, Director of Intelligence and Research (INR), State Department; dePolx, Director, Defense Intelligence Agency (DIA), Defense Department; Proctor, Deputy Director of Intelligence (DDI); and [deleted], Executive Secretary of this Monitoring Group (he was a CIA official). Distribution was made only to the highest level officials in order to avoid leaks, 15 in all.

The Assistant to the President for National Security Affairs took complete control of this monitoring process. He noted that USIB should monitor but that it should reach no decision on compliance or violation, directing that consideration of compliance or violation be reserved for a NSC subcommittee (the Verification Panel) under his personal control. The Assistant to the President for National Security Affairs requested the Director of Central Intelligence (DCI) not to disseminate raw intelligence constituting prima facie evidence of violations of SALT I, instead reserving this information to the NSC staff. In one case in 1973, significant new developments were suppressed under this whole system for about a month. This "hold" system became widespread and tended to cause misleading intelligence reports and leaks. I surely need not call your attention to the fact that a month is a long time for strategic intelligence about nuclear weapons to be suppressed if one conjectures that the U.S.S.R. might be engaged in deception and actually planning an attack. The Assistant to the President for National Security Affairs refused requests from State (Cline) and Defense (de Polx) that Cabinet officers on NSC, as well as the head of the U.S. SALT negotiating team in 1973, be briefed on raw intelligence suggesting violations. Also in 1973, he revealed evidence on big silos to the Soviet Ambassador before the Secretary of State knew anything about it, and he accepted Soviet private assurance via their Ambassador that this evidence was "nothing to worry about."

My conclusion is that SALT I procedures being followed in 1973 could not possibly reveal either compliance or violation definitively because of the vagueness of the agreement, reluctance to let evidence be discussed at Cabinet (NSC proper) level, and the system of private, secret feedback to the Soviet Government through the Kissinger-Dobrynin channel.

My further conclusions are: The DCI was relegated to a tertiary staff level in the Government without access to the President since the DCI was getting orders from the assistant to the President or his NSC staff. Also, the DCI lost control over and responsibility for "evaluation" of evidence relating to "national security" to the NSC staff, which works for the assistant to the President. The basic structures of the intelligence community's responsibility and accountability were warped in these ways, contrary to the National Security Act of 1947, and in fact against principles of good national decisionmaking. A single policymaker ended up controlling dissemination and analysis of intelligence, which provides the only objective basis for judging the wisdom of policy.

These facts, plus other aberrant behavior patterns in the use of the Central Intelligence System in the past 5 to 10 years, suggest that remedies are needed in its structure and operating guidelines. I hope the committee will address itself to these basics of the intelligence process, and I would like to make some specific recommendations for your consideration.

When I came before this committee earlier, Mr. Chairman, I urged it to turn its attention to the crucial need of maintaining a highly professional, sophisticated, strictly objective intelligence research and analysis capability at a high level in our national decisionmaking process. You may remember I said, "If the intelligence community cannot do this job well, the country is in trouble."

In addition to the other points which I then offered as recommendations, I wish to conclude today with outlining a few general principles that should be reflected in legislation or administrative guidelines governing the structuring and operations of an effective national intelligence within the framework of our free society.

First, let us recognize there is no mystery about the main function of analyzing world events and situations with a view to alerting Government policymakers to dangers, problems, or opportunities affecting our strategic posture, our foreign relations, or our international economic interests. It is mostly a humdrum job of collecting and sorting data, keeping files, and piecing together a reliable picture of the international environment with which all of our lives are intimately entangled in today's shrinking, complex political world.

Second, let us note that about 50 percent of the data, analytical frames of reference and findings come from close study of open sources—that is, news reporting, scholarly and technical publications, and the official reporting by U.S. political, economic, and military representatives of our country stationed or traveling abroad.

Third, for about 60 years some happenings and situations overseas that are hidden from open observation have been susceptible to discovery by technical analysis of electronic signals carrying communications or reflecting the activity of military electronic devices. A nation which does not exploit this capability is choosing to be partly deaf in a menacing, noise-filled environment.

Fourth, for about 25 years some situations and developments overseas that are hidden from open observation have been susceptible to discovery by technical observation by imaging cameras or sensors passing overhead—in later years mostly from platforms provided by Earth satellites circling the Earth every 90 minutes or so. A nation which does not exploit this capability is choosing to be blind in a menacing conflict-filled world.

Fifth, since Biblical times when Joshua "spied out" Jericho and since Revolutionary War days when Washington personally directed an extensive spy network against the British in northern United States, espionage has been conducted to find out from human beings information that is being hidden from us which cannot be overheard or seen—secret plans, policies, thoughts, views, expectations inside the heads of men and women. Collecting this kind of supplementary data is enlightening and prudential.

Sixth, collecting counterintelligence data about what other countries' secret intelligence agencies are doing in our country and in allied nations is crucial self-defense.

In the rare circumstances when and where U.S. policy based on U.S. interest commits this country to the maintenance of secure and nondictatorial, parliamentary government and an open, pluralistic rather than a totalitarian society and economy, secret contracts for giving information, advice, and on some occasions money or weapons to friendly, moderate center political forces in these societies, may be a crucial element of aid beyond or instead of direct diplomatic, economic, and military assistance.

I do not believe these should be construed to include large-scale paramilitary operations of the Bay of Pigs variety. These are undeclared wars; I believe they should be controlled by military commands, and CIA should assist in counterintelligence and secret-information collection and analysis.

Assassination is not a useful or appropriate method to be employed in secret-intelligence operations except in time of war or equally grave national danger. This does not mean that CIA or any future intelligence-collection agency will be able to avoid secret contacts with foreigners who are planning to assassinate dictators abroad; this is information which should be collected and assessed because it changes the political situation confronting the United States. It is these contacts which account for most of what is called assassination plotting. The only cases where plotting was carried into an attempt to support assassination were in undeclared wars in the Congo and Cuba in the 1960's. Nobody was actually assassinated as a result of U.S./CIA action. Castro is alive and well in Cuba, supplying advice and soldiers and guns along with the Soviet KGB in Portugal and Angola.

Mr. Chairman, may I remind this committee that the United States went into World War II virtually naked insofar as having strategic intelligence available or any coordinated system for getting it. In 28 years of dynamic intelligence activity CIA and the related agencies of the intelligence community created the best national intelligence system in the world. It made some serious mistakes, some of them in grey areas where responsibilities and guidelines were inadequate, others (the worst) in following emphatic orders from Presidents of the United States to become directly involved in internal security, properly the function of the FBI. I believe the unbridled criticism of CIA in the past year has

diverted attention from the positive achievements of our intelligence system and gravely weakened the effectiveness of this "shield" of the Nation.

#### RECOMMENDATIONS

Legislative and administrative remedies and monitoring should be promptly and clearly spelled out. Harmony—or at least agreement—between the Executive and Congress will guarantee responsible performance. In my long experience the intelligence agencies are remarkably well disciplined under sound political and administrative leadership.

A congressional joint committee with the right to be informed about broad policies and programs of the intelligence community should be created, preferably within the context of a joint national security affairs committee comprised of the main leadership elements of both Houses of Congress. It should not interfere in day-to-day operations but concur in broad guidelines and in basic objectives of covert operations.

A new kind of President's Intelligence Advisory Board should be set up with a small professional staff. It should be assigned the duty of acting as an Inspector-General and a kind of ombudsman facility for the President and on his behalf for the Congress and the country.

An Assistant to the President for National Intelligence Policy Coordination should be appointed in the White House with broad supervisory control of all intelligence agencies. He would bring together NSC, Congress, and the various intelligence components through program guidance and budget presentations to the joint committee of the Congress.

Some recommendations along these lines have already been made with the idea of increasing responsibility and accountability at the White House level immediately below the President. Titles like Director-General of Intelligence have been suggested. In any case, there should be no doubt of this top intelligence official's access to the President.

Reporting to the President and the National Security Council through the National Coordinator should be:

1. An analytical service preparing reports at various levels of secrecy for White House, Security Council, Congress and—as feasible—the public should be constituted as an independent Institute for Foreign Affairs Research, with headquarters at Langley, Va. This Institute should have a Director who is a scholar in international affairs and who has some stature and experience in public service.

2. Technical Signals Collection and Processing Agency; a Technical Imagery Collection and Processing Agency; and a Secret Intelligence Collection Agency, conducting intelligence collection and counterintelligence operations abroad. These three Agencies should be tasked specifically by the analytical Institute in line with guidance from the National Coordinator and—indirectly—the Congress.

3. An internal security intelligence collection agency in the Justice Department, presumably the FBI, operating under legal requirements and search warrant restraints established by the Attorney General and responsively to tasking by the analytical Institute of Foreign Affairs Research.

Secret, small-scale political assistance to friendly political elements in major areas of strategic importance to the United States should not be prohibited by law. In the rare circumstances when they are required, they should be planned at the National Security Council level with adequate consultation with the new joint committee of the Congress on national security affairs. When agreed, these secret operations should be carried out on an ad hoc basis by appropriate agencies of the executive branch, usually the Secret Intelligence Collection Agency which would normally have the contacts and information needed for the job. Procedures governing this sensitive kind of activity should be set and understood at the highest level of Government, regardless of which administrative instrument of policy is instructed to carry out the operation.

Mr. Chairman, I wish to conclude by saying that a restructuring of the national intelligence systems along these lines would have adequate checks and balances, clear definitions of responsibility and accountability, and sound functional architecture to restore it to effectiveness and permit its skills to be engaged in support of decisionmaking. Time is crucial and we must move expeditiously to get our intelligence machinery working at top efficiency again.

Chairman PIKE. Mr. Proctor, where are the understandings that you referred to on page 5, relating to restricting public statements, documented? Were these understandings ever in writing anywhere?

Mr. PROCTOR. The only place I know is in paragraph 8 of the Standing Consultative Commission regulations in which there was a specific provision that no public statements will be made by either side without consultation or something like that.

Chairman PIKE. No public statements on any subject whatsoever?

Mr. PROCTOR. Dealing with verification or violations? I don't have the agreement in front of me to quote.

[NOTE: Mr. Proctor subsequently extended his statement as follows:]

I think paragraph 8 of the regulations of the Standing Consultative Commission says that what was discussed at the meetings of the Commission would not be made public without the consent of both sides.

Chairman PIKE. Was Congress ever told, prior to the approval of the SALT agreement, that intelligence which America gathered on possible violations would be discussed with the Soviets before it was discussed with the Congress?

Mr. PROCTOR. Not that I know of. I have no way of knowing.

Chairman PIKE. You are familiar with these various documents that we asked to have declassified, are you not?

Mr. PROCTOR. Very much so.

Chairman PIKE. I am not surprised. The first document, which is not a memorandum from you but rather from a gentleman whose name I understand should not be revealed, is dated October 17, 1972. It reads:

Jack Merritt called today in connection with the recently received SALT baseline report. He said he had been asked to get in touch with us and say that, in the reports of the intelligence community concerning SALT monitoring, Dr. Kissinger wanted to avoid any written judgments to the effect that the Soviets have violated any of the SALT agreements.

Is it common practice for the Director of Central Intelligence to be advised not to make written judgments on anything? How did we get to the point where the Director of Central Intelligence can't come to conclusions and pass these conclusions on to the President?

Mr. PROCTOR. What was conveyed in that telephone conversation reported in the October 17, 1972, memo that you refer to was an understanding which had already been pretty well established with respect to whether the intelligence community would make judgments about violations. The role, as I mentioned in my prepared statement, of the intelligence community was to monitor, and to report the facts and assessments thereof.

Chairman PIKE. But, basically, you were told not to come to any conclusions—or not to come to any written conclusions. Even if you came to conclusions, you were told not to write them down. Isn't that the essence of that memo?

Mr. PROCTOR. Not to put them in the regular monitoring report?

Chairman PIKE. No; to avoid any written judgments. That is the language in the memo.

Mr. PROCTOR. Yes. If I may, Mr. Chairman, this was a memo for the record prepared on the basis of a phone call in which there was not very much care paid to precise language. However, the sentence that follows the one that you read states, "If the Director believes that the

Soviets may be in violation, this should be the subject of a memorandum from him to Dr. Kissinger."

Chairman PIKE. That is right. The memorandum says that. But what it says was that the Director can say that he believes the Soviets may be in violation, but he can't say that the Soviets are in violation. Is that not really what the memo says?

Mr. PROCTOR. If that is the way you read it.

Chairman PIKE. No; isn't that what it says? He is to avoid any written judgments to the effect that the Soviets have violated any of the SALT agreements.

Mr. PROCTOR. That is an interpretation. But I think it is important to note that it is very difficult to determine from the facts and most of the ambiguous situations we have had so far whether an actual violation of the treaty or the agreements took place.

Chairman PIKE. I am not concerned with whether or not there were violations. But I am concerned with the concept that the Director of Central Intelligence is being told how he must convey information. That is what I am concerned about.

Mr. PROCTOR. There is one other point. I think the Director at that time and his successors have been very conscious of the fact that, from their own point of view, their role is to monitor SALT and not to declare violations.

Chairman PIKE. Mr. McClory?

Mr. McCLODY. Thank you, Mr. Chairman.

I think this is a most important session we are having this morning, particularly because there seems to be a great trend these days to attack the entire intelligence community. And the Secretary of State seems to be fair game for part of this attack.

First of all, I would like to ask you, Mr. Proctor, and you, Mr. Hyland, primarily, whether in any of this—you have already indicated, Mr. Proctor, that there is nothing unprecedented about a hold procedure such as was followed here.

Mr. PROCTOR. That is correct.

Mr. McCLODY. But there has been testimony that somehow or other the Secretary of State, in his former capacity as Assistant to the President for National Security Affairs, colluded with someone else or some other group, to withhold information. Was anything done which is either illegal, improper, ulterior, or collusive insofar as this action is concerned?

I will stop there for the moment. I do have one other question.

Mr. PROCTOR. I am not a lawyer and, therefore, I am unable to answer some of those questions in terms of legalities. I found nothing wrong with the principle involved here at all. In fact, the reasons I stated in my prepared statement for the "hold" items are still clear. I think they are valid.

One is that sometimes items are held because we don't know what the information means and we have to wait either for further analysis or additional information.

The second was that there has been, over the last several years, a rash of leaks which both jeopardize ongoing negotiations, or have the capability of doing so, and also jeopardize very important intelligence sources.

The third reason was that we had an agreement not to discuss violations per se outside of those various private sessions without mutual agreement.

Mr. McCLORY. You would concur in that, Mr. Hyland?

Mr. HYLAND. Yes, sir.

Mr. McCLORY. Is it not true that Under Secretary of State Rush was the appropriate person to communicate this information to and that constituted communication to the Secretary of State? This criticism about not communicating with the Secretary of State also is not valid if the communication was with the person in the State Department who was charged with that activity.

Mr. PROCTOR. Yes, I presume he was the appropriate person to be told, in the first instance, after the Director of INR was told.

Mr. McCLORY. Mr. Hyland?

Mr. HYLAND. Yes, sir.

Mr. McCLORY. Let me ask this further question. What disturbs me are these leaks. I think these egregious leaks are just appalling—to think that if you circulate classified, secret information for the defense of our Nation to the Pentagon or someplace else, it appears in a publication called Aviation Week. Are there deliberate leaks? What, if anything, is the intelligence community endeavoring to do to close up the leaks? I think the security of our Nation is impaired by these egregious leaks, when classified information appears in public for the benefit of the enemy as well as for the critics, fairly or unfairly, of our intelligence community or public officials.

Mr. HYLAND. May I comment on that, Mr. McClory?

Mr. McCLORY. I would like you to, yes.

#### **STATEMENT OF WILLIAM G. HYLAND, DEPUTY ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS**

Mr. HYLAND. I think the whole SALT process has been plagued by leaks. Not only have negotiating positions and fallback positions appeared in the press before they could even be put to the Russians; the whole issue of compliance has been clouded by a considerable amount of misinformation which has appeared in journals, such as Aviation Week, and the newspapers, on what the Soviets have or have not done.

This is undoubtedly one of the reasons there has been an effort to keep the initial reporting on a possible violation within a fairly narrow circle.

Let me also say this: Regardless of how many documents you have that say Mr. so and so was told and Mr. so and so wasn't told, since 1968, when the U.S. Government began to be seriously involved in SALT and the preparations for SALT, there has grown up in Washington a large community of SALT experts. I would say there are at least 200 people who know about any development instantaneously, regardless of how many hold documents are issued and how many restrictions are put on documents.

I think if you had an opportunity to talk to the working level of SALT experts in the CIA or Defense Department or State Department, you would find these hold documents are not regarded with quite the sanctity as was indicated in the formal presentation.

I believe your staff was present last week when I was told that 73 analysts and officials in the CIA were informed immediately, or within a day or so, of a so-called hold item. If that applies in several departments, you immediately have 200 people who are in on the ground floor. That is one reason why there are some leaks.

It is also one reason why the whole debate about holding up intelligence is somewhat academic.

Chairman PIKE. The time of the gentleman has expired.

Mr. McCLODY. May I make a unanimous request that the entire press conference of the Secretary of State be included?

Chairman PIKE. Certainly. Without objection, portions of the press conference of the Secretary of State regarding alleged SALT leaks and hold items will be included in the record at this point.

[Excerpts from the press conference follow:]

EXCERPTS FROM SECRETARY KISSINGER'S PRESS CONFERENCE OF DECEMBER, 9, 1975

The first information about any event is usually extraordinarily illusive and ambiguous, and one part of the process of the Government is to refine the information until we reach a point at which senior officials can make a reasonable decision. \* \* \*

\* \* \* Our policy is to seek clarification of ambiguous situations as soon as there is a tangible basis for doing so and to resolve ambiguities as quickly as possible in order to preclude development of a more serious situation.

\* \* \* There is no instance in which a reported violation was not immediately—an alleged violation—was not immediately reported to the President. And we have searched all the files of all the incidents.

\* \* \* The procedure is that the Working Group will attempt to determine what is going on and will devise either options or recommendations for consideration by the Verification Panel. The Verification Panel then reviews it and makes a recommendation or defines options. In all the meetings that I have described of the Verification Panel there was never a split decision. The allegation that individuals or departments have held up consideration of compliance issues, have obscured consideration of compliance issues, have refused to deal with compliance issues, is a total falsehood. All the decisions of the Verification Panel with respect to compliance have been unanimous. \* \* \*

\* \* \* There is nobody who has claimed that the issue of compliance was not being adequately pursued. There is nobody who has objected to the handling of the information. \* \* \*

The reason there have been so few NSC meetings on the subject is because the decisions of the Verification Panel have always been unanimous, and because no member of the Panel has ever appealed to the President with a contrary view.

With respect to the handling of intelligence, all intelligence concerning alleged noncompliance was immediately distributed to all the members of the Verification Panel and by them to those of their senior members that were concerned with SALT.

For the period that a preliminary investigation was going on, the intelligence was not distributed in the technical publications that were addressed to those whose primary responsibility was not concerned with SALT at a level below the Cabinet level. The longest time this ever took place was a period of two months, and usually the so-called hold has been for a period of about a week or 2 to permit the refinement of intelligence.

Now, as I have pointed out, the issue of compliance is an extremely complicated one, and in rummaging through the files of various departments it is not difficult to find memoranda written by subordinates who have no idea of what



is going on in the overall picture, who will write down their own perceptions of what they think is happening—usually in the modern form of memoranda of conversation to themselves that nobody ever sees, on which no one can ever comment, and which appear 3 years later in a context that no one can ever discover.

\* \* \* \* \*

The charge that information has been deliberately withheld is false. The charge that the President was not briefed is false. The charge that either I as Secretary of State or as assistant to the President have refused to deal with compliance issues is false. The charge that there were secret agreements is essentially false. And I think these are the major items; if there is anyone else who wants to ask—or if I have left one out I will be glad to—

Q. If I may just follow up: Why do you say essentially false?

A. Because there was an interpretative statement that for some reason was not distributed to the bureaucracy, even though the essence of it was distributed to the bureaucracy and even though the bureaucracy was instructed to testify as to its contents. Why it was not distributed, I cannot for the life of me remember now. But the bureaucracy was told that such an interpretive statement would be negotiated, its content was distributed to it, so technically speaking this was not seen, but the content was known.

\* \* \* \* \*

Chairman PIKE. Let me just say that although the gentleman's time has expired, if either Mr. Cline or Mr. Proctor would like to comment on the statements of the other witnesses, I think it would be perfectly appropriate for them to do so. Mr. Proctor?

Mr. PROCTOR. I endorse what Mr. Hyland has said about the widespread knowledge of what are called hold items. There is a psychological effect, however, as small as it may be, that if some information is in hold, most of the people who have access to it would tend to keep it closely to themselves. With regard to leaks of sensitive intelligence—both in the SALT and the non-SALT environment—there is virtually nothing that can be done, except perhaps try to limit its dissemination.

The hold item is an example.

Chairman PIKE. Mr. Cline?

Mr. CLINE. Thank you very much. I just wanted to make a point about Mr. McClory's reference to the procedures for disseminating this hold intelligence. Like Mr. Hyland and Mr. Proctor, I am aware that many CIA officers learn this information and need to learn it, and many defense intelligence officers and others in the Defense Department learn it. The point I was trying to make, Mr. McClory, is that it seems strange to me that if 73 or 78 working people in the CIA knew the information and a large number in the Defense Department as well, it was not permitted—and expressly not permitted—for the Secretary of State to be informed at that time.

Now I know Mr. Rush very well. I did consult him on this matter. I found that he was very vaguely informed of the existence of the intelligence by someone at a White House meeting. He did not know the facts very clearly. He expected me to have those facts available. So I went to the Director of Central Intelligence—or actually his Deputy, General Walters—with the request that I be allowed to inform the Secretary of State, who was then Mr. William Rogers, and the head of the U.S. team negotiating a further disarmament agreement, who was then, I believe, Mr. Alexis Johnson. There were two reasons for this request: I felt they might make errors in statements they made to the Congress or the public about these matters. I also felt if they were fully aware of the general situation with respect to Soviet compliance,

this might well affect our negotiating posture and our discussions with Soviet officials.

It seems to me it was a very reasonable request. I was very surprised to discover, at least for a certain period of time in that first crucial period, that this request was denied—not as far as I know by the President; not as far as I know even by the assistant to the President; but by a young man on the staff of the NSC dealing with the Verification Panel, whose motives, I am sure, were very honorable. It seems to me to be a rather strange procedure for handling the dissemination of intelligence.

That is the reason I brought this point up. I think this committee should concern itself with good intelligence procedures. I question the motives of no one involved in this matter.

Chairman PIKE. Mr. Dellums?

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Proctor, I would like to read from portions of a memorandum dated July 13, 1973, that you wrote to the then Acting Director of Central Intelligence, Mr. Colby. The subject was "the 'hold' on."

[The memorandum is in the committee files.]

The memorandum begins, "It is now 24 days since we reported to Dr. Kissinger on the defection of several"—and then there is a blank. I assume that relates to alleged violations.

Mr. PROCTOR. An alleged violation—one.

Mr. DELLUMS. "During this period this and related evidence have been held in a strict hold status on instructions of the NSC staff."

On what basis does the NSC staff tell the Central Intelligence Agency to withhold information?

Mr. PROCTOR. I guess it is authority derived from the Assistant to the President for National Security Affairs and derived to him from the President.

The basis for withholding this particular information was that there were ongoing negotiations which are referred to in this memorandum or other supporting data that you have.

Mr. DELLUMS. Did the President participate in this decision?

Mr. PROCTOR. Not that I know of.

Mr. DELLUMS. Let me move on to another part of the memorandum: "~~No one else in ACDA~~"—the Arms Control and Disarmament Agency—"or the State Department is aware of this information, nor, of course, are any members of the key congressional committees concerned with SALT verification matters. Among those not now authorized to know about the matter are Ambassador Johnson, head of the SALT delegation, and Sydney Graybeal, the U.S. Commissioner on the United States-Soviet Standing Consultative Commission set up to deal with problems of compliance with the strategic arms limitation accords."

What is the basis for withholding intelligence data from those very persons responsible for negotiating arms limitation compliance?

Mr. PROCTOR. I would like to supplement what you said before answering the question.

An accompanying document, item 10 on the chairman's list, dated July 13, 1973—says that Sydney Graybeal was authorized to receive this information.

Mr. DELLUMS. But he was not briefed for about 24 days. There was a 24-day time lag, wasn't there?

Mr. PROCTOR. He was briefed the 16th of July. But with respect to Ambassador Johnson, which is your question—

Mr. DELLUMS. Since you quoted from that particular memorandum in relationship to Mr. Graybeal, I would like you to comment fully.

Let me read from another comment in that very same note for the record dated July 13, 1973, in which you say: "Earlier this morning I had discussed with General Walters and Mr. Colby the DCI's obligation—a la Watergate—to make sure that the President knew of the withholding of intelligence, was aware of the consequences of prolonged delay in informing others in the executive and legislative branches, and nonetheless had approved the continuation of restrictions."

Would you comment on that as well? These are now your comments.

Mr. PROCTOR. That is right. I was quite concerned and so was Admiral de Poix, who was then Director of the Defense Intelligence Agency. The question on our minds was not whether the President was familiar with the substance of the "hold" item. That was not the question. Rather, the question was really whether the President was aware of the fact that the information had been given very limited circulation and did not appear in our regular publications. That was my concern. When I wrote those two documents in July 1973, I was, of course, affected by what was going on in Washington at that date.

Before coming here today, I reviewed what was in the New York Times for the period July 13-20, 1973. It was clear from the headlines that President Nixon could very well have been preoccupied with other matters—other than SALT and verification.

The President was in the hospital for that entire period suffering from viral pneumonia. Some of the stories in the Times were on Watergate. In fact, the Times carried an average of four pages a day on Watergate during that week. Other stories were, and these are sort of a précis of the headlines, "Nixon agrees to meet with Ervin but not testify"; "Air Force Major says he falsified records to hide U.S. B-52 bombings in Cambodia in 1970"; "Butterfield tells all, Nixon taped everything."

I just wanted to make sure that the President was not too preoccupied with these other matters to know the fact that dissemination of the information was being limited.

Chairman PIKE. Mr. Aspin?

Mr. ASPIN. Thank you, Mr. Chairman. I have just a couple of questions. Have we determined how many people were actually receiving this information which was on "hold" status?

Mr. PROCTOR. That was in my prepared statement.

Mr. ASPIN. How many was it?

Mr. PROCTOR. It depended from time to time on the nature of the subject, the sensitivity of the intelligence itself, and what was going on in various negotiations. I think, as a generalization, virtually every time, obviously, the Assistant to the President for National Security Affairs was informed, the Secretary of Defense, the head of the Defense Intelligence Agency, on occasion the head of INR, who in turn told several other people in the Defense Department—including the

Chairman of the Joint Chiefs of Staff and various other people dealing with SALT matters.

Besides those officials, a large number of analysts who actually got the information first were informed. Since we did not keep records of precisely who received the information on each occasion, we reviewed the most recent item, which was in October of 1975.

We found that within the CIA, 75 officials knew. More than half of them were in the line of analysis and reporting.

Mr. ASPIN. Can you tell me who it is that decides in these cases who is on the distribution list? How is that decided, especially if it depends on different situations for different cases?

Mr. PROCTOR. Sometimes the Director of Central Intelligence will recommend people in addition to those that I have just named.

Mr. ASPIN. But who is making the decision? Who recommends to whom?

Mr. PROCTOR. I will recommend to the Director and the Director will recommend to the Assistant to the President for National Security Affairs.

Mr. ASPIN. So ultimately it is his decision; is that right?

Mr. PROCTOR. That is as far up the line of command that I can go.

Mr. ASPIN. I have just been told by a member of the staff that, in fact, the Defense Department was unable to give us a list of who has really got these "holds." Is that right?

Mr. PROCTOR. I received a list informally from them. I read into the record the most recent data I got last night on the subject. If you would like to know who they are I can read it to you.

Mr. ASPIN. If it has been read into the record, there is no need to. Let me follow with a different question.

Is there anybody who is suggesting, or has there ever been any charge made, that, because of this "hold" information or any kind of information being held, the alleged violations or the suspicion of violations were not investigated or were not followed through with in a complete and effective manner?

Mr. PROCTOR. Yes.

Mr. ASPIN. In other words, was there ever any evidence or anybody charging that, because of the hold system, we did not pursue the suspicion of violations or the allegation of violations as rapidly or as thoroughly as we might have?

Mr. PROCTOR. The answer is yes and no. From what I read in the newspapers, everybody is charging. From within the Government, I know of no one who has. I now think part of the problem is that those who are charging this are not familiar with what is going on and probably do not have a need to know.

Mr. ASPIN. I would like Mr. Hyland and Mr. Cline to please comment on that question.

Mr. HYLAND. Well, I guess my answer is not quite to that question. But as I look at these documents and from my own memory, it seems to me you have to put in some perspective this famous "hold" item that went for 24 days or longer. What was going on in Washington was not just Watergate. From the 18th of June to the 26th of June 1973, the General Secretary of the Communist Party of the Soviet Union was here—in Washington, at Camp David, and at San Clemente.

SALT was obviously one of the major issues being discussed. In fact, an agreement on SALT principles was released at the end of that visit. The "hold" item that was brought to Dr. Kissinger's attention by the Director of CIA in the documents you have begins by saying: "I have decided to withhold it from publication until you have had an opportunity to review it and can indicate how you want it handled."

That was on the 19th of June. It was actually received on the 20th of June and staffed for Dr. Kissinger. Six days later, at the end of the Brezhnev visit, a note had been sent to the Soviet Union on this very topic.

A reply was received. A second note was then sent. So the idea that this was some kind of a super secret "hold" item which nothing was being done about, and the fact that maybe Mr. Rogers didn't know—which I am very suspicious of anyway, since he was in all these conversations at Camp David and in San Clemente—is just absurd. We had already been in contact with the Soviet Union twice; there had been a meeting of the Special Verification Panel Working Group that deals with this subject during this period; and there were at least two meetings between Walters and Kissinger asking for papers on the subject and further analysis of what possible countermeasures we might take.

Then, I think the fact that it was held from the 20th of June to whatever the date is—August 8—is very misleading, unless you consider what went on during this whole period. That one or two officials did not know—I cannot explain why one official decides whom he will brief in his department. That may be a quirk of how that department works. But the Deputy Secretary of Defense was briefed. Whether he considered it important or not, I couldn't tell. To the Secretary of Defense, the Chairman of the JCS, obviously the Director of Central Intelligence, the National Security Adviser, the NSC staff, this information was not exactly supersecret, and it had already been acted on.

Mr. ASPIN. Mr. Cline, could you comment please?

Mr. CLINE. I find it a little difficult to follow the logic of Mr. Hyland and Mr. Proctor that many people knew it, so it was unnecessary to tell other people who seemed to me to have a responsibility in the policy level of the Government.

It was this anomaly that troubled me at the time. Of course, as Bill Hyland says, if I had chosen to brief the Secretary of State, contrary to instructions relayed through CIA from the NSC staff, I could have done so. It seemed to me probably better to work out this system so that it would work correctly rather than to remedy it on a single occasion by my own unilateral action contrary to instructions.

I guess what I really object to in principle, as an intelligence officer—and I think intelligence officers have a kind of fiduciary responsibility to the Government to see that objective evidence is available where it is needed in our Government—is that these very difficult problems, such as the size and identity of items being built and the size, purpose, and range of weapons being built, should be discussed in private diplomatic channels with representatives of the Soviet Union before an orderly examination of the problem at the National Security Council level took place.

Chairman PIKE. The time of the gentleman has expired. We have a vote on the floor. The committee will stand in recess for 12 minutes. [A brief recess was taken.]

Chairman PIKE. The committee will come to order. The Chair recognizes the gentleman from Louisiana, Mr. Treen.

Mr. TREEN. Thank you, Mr. Chairman.

Mr. Hyland, Mr. Proctor and Mr. Cline, we had some very serious testimony a few days ago from a very high-ranking former official of the Government, Admiral Zumwalt, who made several accusations. Among them was that information with regard to compliance with the SALT treaty was not reaching President Ford.

I would like you to comment on that Mr. Hyland, and then the other two gentlemen. Do you have any information to support that accusation, or to deny it?

Mr. HYLAND. I have no information whatever to support it. I have some information to refute it, in terms of what Secretary Kissinger has already said—that the President has been informed, and continues to be informed on a regular basis, about SALT in all its aspects.

There was an NSC meeting devoted to this subject and to this subject alone. There have been several meetings of the Verification Panel since President Ford took office which were devoted to this subject and which have been reported to the President.

I believe even Admiral Zumwalt acknowledged he had somehow seen a memorandum commenting on his allegations—which appeared in an earlier article—that had been written by the NSC staff for the President. So I think there is no foundation for that. And I am a little perplexed that Admiral Zumwalt is in a position to make such a charge.

Mr. TREEN. Well, your statement is based upon what Secretary Kissinger said, I presume. Do you have any knowledge yourself to refute what Admiral Zumwalt had to say—that it was his judgment that President Ford had not been fully informed on the question of compliance?

Mr. HYLAND. Personal first-hand knowledge, in terms of my own discussions with the President?

Mr. TREEN. Yes; if you had been present, of course, during the briefings.

Mr. HYLAND. Well, I was present at the Vladivostok meeting when the Vladivostok agreement was negotiated. I am aware of what has been in the President's briefing books, and they are voluminous.

Mr. TREEN. Is it your judgment that President Ford was fully briefed on all of the allegations of noncompliance at the time of the Vladivostok meeting?

Mr. HYLAND. Yes, sir; including the allegations that the Russians made against us.

Mr. TREEN. Another accusation made by Admiral Zumwalt was that during the time Richard Nixon was President, Secretary Kissinger told the Secretary of Defense not to transmit information to President Nixon regarding compliance or noncompliance with the SALT treaty. Do you have any information on that, or can you comment in any way?

Mr. HYLAND. At the time that statement was made, an effort was made to find out whether there was any documentation or any record to support it. Nothing has come to light whatsoever.

That period, again, has got to be kept in perspective. I believe the Admiral said it was around June of 1974. In the latter part of June 1974, President Nixon went to the Soviet Union to continue SALT negotiations with General Secretary Brezhnev.

There had been a number of meetings of the Verification Panel on all aspects of SALT prior to his departure, and the President, of course, was briefed, and conducted the negotiations in the Soviet Union on SALT with Brezhnev.

So the idea that certain proposals or certain suggestions from the departments were being kept from him is, again, very baffling to me.

Mr. TREEN. Has the Secretary commented at any time on the accusation that he gave instructions to the Secretary of Defense not to brief the President?

I am not concerned with what his reasons might have been, if he did. I first want to know if we know whether or not those instructions were ever given.

Mr. HYLAND. I know of no such instructions from personal knowledge.

Mr. TREEN. Can you speak for the Secretary on this point?

Mr. HYLAND. I think I can speak for the Secretary in saying that he knows of no such instructions.

Mr. TREEN. He would know if he gave them. Are you saying he did not give such instructions?

Mr. HYLAND. Yes, sir.

Mr. TREEN. Finally, with respect to the charge that you made, Mr. Cline, that you wished to provide certain information on this subject to Secretary Rogers, and that the request was denied; I would like to know to whom you made the request and from whom you received a response, and then I would like to have Mr. Hyland comment if he can, with any information on your response.

Mr. CLINE. Yes, sir, Mr. Treen. I raised my objections in the meeting of the Intelligence Board SALT Monitoring Group, which was described earlier this morning. I was a member representing the State Department. Dr. Proctor was a member. General Walters—the Deputy Director of CIA—was the chairman, and Admiral de Poix was the other member. It was, I believe, from Dr. Proctor or possibly General Walters that I got the word later on that the recommendations I had made were not going to be followed.

Mr. TREEN. Mr. Proctor and who were the others?

Mr. CLINE. General Walters. Maybe Ed remembers.

Mr. TREEN. Let me amend my question to—

Chairman PIKE. The time of the gentleman has expired, but if you would like to comment, you may.

Mr. CLINE. Ed, can you clarify that?

Mr. PROCTOR. There were three members besides the Chairman. General Walters was the Chairman; Admiral de Poix was a member and was director of the Defense Intelligence Agency; Ray Cline from INR, and myself as Deputy Director of Intelligence, CIA. That was the membership.

Mr. TREEN. Mr. Chairman, I know my time has expired, but I did not get an answer to my question, which was from whom did the denial come?

Mr. CLINE. I said either Dr. Proctor or General Walters. It was a CIA official telling me, on behalf of the White House, that the Secretary should not be informed, nor Ambassador Johnson. I think Ed Proctor can confirm that, although I forget who called me.

Mr. PROCTOR. I can't confirm that.

Mr. TREEN. Cannot?

Mr. PROCTOR. I cannot. At the October 24, 1972, meeting of the USIB steering group on SALT, Ray raised the question—in fact Admiral de Poix raised the question—about briefing senior officials in their Department. General Walters listened to them and I am reading from my memorandum of, which you have a copy:

Ray Cline said that he must keep people like Rogers and Johnson informed about all substantive findings of the steering group when such findings were made. de Poix said that he was in a similar position. General Walters said that he realized that we "all live in the real world," indicating some sort of concurrence.

I took that to mean that they would tell people, although perhaps not provide them with the written record.

Chairman PIKE. Mr. Lehman.

Mr. LEHMAN. Mr. Chairman, I yield my 5 minutes to the chairman.

Chairman PIKE. I thank the gentleman.

Mr. TREEN. Mr. Chairman, may I raise an inquiry? I asked Mr. Hyland if he could comment on Mr. Cline's response on that particular item.

Chairman PIKE. You are perfectly free to do so, Mr. Hyland.

Mr. HYLAND. For the information of the committee perhaps I should straighten out the positions of the people in the State Department at that time. Deputy Secretary Rush and his successors are members of the Verification Panel, along with the Deputy Secretary of Defense, the Chairman of the JCS, the Director of Central Intelligence, and Director of ACDA. So Mr. Rush is the logical person to have been briefed by Mr. Cline, or by myself after I succeeded Mr. Cline, on SALT-related matters.

Whether the Secretary of State is also briefed is a matter, first of all, that has to be decided somewhat on the basis of the substance. If it is a minor issue, the chances are you wouldn't make a special effort to brief the Secretary. If it looked like a major issue, my feeling would be that you would ask the Deputy Secretary to bring it to his attention, or do it yourself.

I don't think at any point in this process on this particular item there was an expressed disapproval—that the Secretary of State not be told. There certainly could not have been a written directive from the NSC saying, "You shall not tell the following."

Now, in fact, people are told or not told largely as a matter of judgment. Alex Johnson happened to be on vacation at the time. Sid Graybeal was in Geneva and was briefed soon afterward. Two members of Alex's negotiating team, Paul Nitze and Edward Brownlee, were briefed immediately. If you talk to Alex, my guess is that he knew about it whenever he came back from leave.



Mr. TREEN. Thank you, Mr. Chairman.

Chairman PIKE. I want to get back to your memorandum of July 13, 1973, Mr. Proctor. I recognize the validity of the comments you made about what was going on in that period of time as far as the Presidency was concerned.

However, you say—and I am reading from page 2, item 5, of this memo—

At this stage, I think you as Acting Director of CIA must get concrete assurance from Dr. Kissinger that the President is aware of the decision to withhold this information from key officials in the executive branch and from Members of Congress who would almost certainly feel that they have the right and a need to know about the problem and that the President is also aware of our concern.

Do you know whether that message was in fact gotten to the President?

Mr. PROCTOR. No; I do not. But I do know that soon after this memo was written and the similar notes for the record I made at the period July 13–20, 1973, the information was released from the "hold" status and put into our general publications at the appropriate security level.

Chairman PIKE. Was it given to what you referred to here as key Members of Congress?

Mr. PROCTOR. I don't know when. It was later.

Chairman PIKE. In his press conference the other day, the Secretary of State said this:

With respect to the handling of intelligence, all intelligence concerning alleged noncompliance was immediately distributed to all the members of the Verification Panel and by them to those of their senior members that were concerned with SALT.

Well, now, is it not true that in fact Secretary of State Rogers was, at least in some manner, concerned with SALT, and for substantial periods of time was not advised of these matters? Or would you say he was not concerned with SALT?

Mr. PROCTOR. No; I would not say he was not concerned with SALT, but obviously this was not his single prime concern. But what I will say is that I do not know whether or not Secretary Rogers was informed. According to my records, we did not inform him.

Chairman PIKE. Well, according to your records, Mr. Rush also stated at one point that he was not aware that Rogers had not been informed; is that not correct?

Mr. PROCTOR. I think we were both in the same position. I did not know for a fact that he had been informed.

Chairman PIKE. Let me go on a little further from this press conference:

For the period that a preliminary investigation was going on, the intelligence was not distributed in the technical publications that were addressed to those whose primary responsibility was not concerned with SALT at a level below the Cabinet level. The longest time this ever took place was a period of 2 months, and usually the so-called hold has been for a period of about a week or two to permit the refinement of intelligence.

Now, we have a list of "hold" items, and I think that you have the list also in front of you. And I call your attention, without going into what the issue was, to one item dated October 22, 1974. When was that released or taken off "hold"?

Mr. PROCTOR. Well, it was taken off "hold" December 17, 1974.

Chairman PIKE. When did it appear in your publication?

Mr. PROCTOR. At approximately that date or the day following.

Chairman PIKE. So that was almost 2 months.

Now the one above that was placed on "hold" on October 8, 1974. When was that taken off?

Mr. PROCTOR. December 17, 1974.

Chairman PIKE. So that is more than 2 months.

The one above that was placed on "hold" on September 23, 1974. When was that taken off "hold"?

Mr. PROCTOR. Same date—December 17, 1974.

Chairman PIKE. The one above that was placed on "hold" September 11, 1974. When was that taken off "hold"?

Mr. PROCTOR. Same date.

Chairman PIKE. The one above that was placed on "hold" July 26, 1974. When was that taken off "hold"?

Mr. PROCTOR. Same date.

Chairman PIKE. And the one above that was placed on "hold" on June 29, 1974, and that too, was not taken off for almost 6 months. Are those not the facts?

Mr. PROCTOR. That is what the record shows.

Chairman PIKE. Mr. Murphy.

Mr. MURPHY. I yield my time to Mr. Dellums.

Mr. DELLUMS. Thank you, Mr. Chairman.

Mr. Proctor, when you testified that the Pentagon had given you an informal list of those who received "hold" items, did you know that the Pentagon had written this committee that they were completely unable to determine who actually received "hold" items?

Mr. PROCTOR. I was unaware of that. But, Mr. Dellums, what I got was a list of people whom they were sure were briefed. They could not give me a complete list, and I am not surprised at that at all.

Mr. DELLUMS. Why was the CIA press officer allowed to receive "hold" items?

Mr. PROCTOR. CIA press officer? Not as far as I know. He was not on—oh, on occasion he attends the Director's morning meeting and the subject will—usually I will tell the Director at the morning meeting that an item—with some specificity, but not in all its gory details—was being suggested for "hold," and that is how he heard about them. He never got any detailed information or copies of any of the memoranda or anything like that.

Mr. DELLUMS. Now, I would ask the panel to comment on this: We obviously have testimony that some policymakers were not given the information by virtue of the "hold" procedure. Were those policymakers who were excluded considered either leaks, on the one hand, or political opponents, on the other hand?

Mr. PROCTOR. Neither of those, as far as I know.

Mr. DELLUMS. What was the characterization that justified the policymaker not receiving the information?

Mr. PROCTOR. They didn't have a high degree of need to know. They were not deeply involved. That was the basic one. Certainly not on the basis that you are talking about.

Mr. DELLUMS. Do all three of you concur in that statement?

Mr. HYLAND. I am not sure whether we are talking about the people at a much lower level or people at the Cabinet level or subcabinet

level who were advised of a "hold." Whom are you referring to—the subcabinet and Cabinet level officials?

Mr. DELLUMS. Yes.

Mr. HYLAND. The basic procedure was that the members of the Verification Panel who have a policy responsibility for SALT were to be notified. That includes the Deputy Secretary of State, the Deputy Secretary of Defense, the Chairman of the JCS, of course the Director of CIA, and the Chairman of the verification panel, who was the assistant to the President.

Once those people were notified that an item of some special importance had been detected in intelligence, it was then up to the various departments how they wanted to handle it internally.

There was no effort to say this particular man should never be told. There was a special category, of course, of those people who were overseas and involved in the SALT negotiations. At the very beginning, when the treaties were signed, it was determined that it was best to separate the compliance with the agreements already reached and the negotiations for a new agreement. It was felt at the time that if the same person handled both negotiations, he would be in a sort of conflict-of-interest situation—he might not want to take a tough position on SALT compliance because it would interrupt the negotiations for a new agreement.

So those two bodies, the SALT negotiating team under Alex Johnson and the Standing Consultative Commission under Mr. Graybeal, were separated. Therefore, there was always a question in any intelligence item whether they should be informed or whether they should not be informed, and it was usually that they would be informed. But there were occasions when they were either out of town or not in session, and they were informed later.

But I know of no piece of intelligence on this entire list that was completely withheld from them or withheld from members of the Verification Panel.

There would be no sense to doing it since the meetings took place fairly regularly and they start with a briefing on these very subjects. So it would be kind of mindless to say, "So-and-so should not hear" when he is going to hear it in 2 or 3 days at a meeting.

Mr. CLINE. Mr. Dellums, I would like to comment on that. Ed Proctor and Bill Hyland both worked on my staff, so I would not suggest they are saying anything wrong. I heartily approve of their work as intelligence officers. However, their memory on some of these things is a little hazy in comparison to mine.

I may be wrong, but I do remember rather distinctly, and I fortunately now have some documents here which refresh my memory—and they have been declassified—about this situation.

To answer your question, Mr. Dellums, I do consider the Secretary of State a gentleman who has every right to be informed about treaties and compliance with treaties. I find it a very strained construction to argue that because one of his deputies is a member of an NSC subcommittee under Dr. Kissinger at the time, that he should be informed and the Secretary should not.

Now, both Ed and Bill have suggested that I should privately inform the Secretary, contrary to the "hold" arrangements. I submit that that was a rather difficult burden to put on the Director of Intelli-

gence in State, partly because I can assure you that any violation of instructions from the White House was met with great wrath from the NSC staff at the time.

Second, because, as Dr. Proctor said rather elliptically a moment ago, the Director of INR was sometimes advised that there was a "hold" item.

To be perfectly candid, I had a helluva time finding out when they were holding the items down and when I did find out they were held down, that did not mean the information was released to me or the State Department so I could brief the Secretary. That is why—when I discovered what seemed to me to be a rather important issue about an item being withheld for a period of over a month in 1973—I went to the group with which I normally worked and explained my problem that I wanted this information released for the Secretary of State. As far as I know, it never was released.

I left the Government about 4 months later, and I don't know whether Bill Rogers ever got briefed on the subject. I doubt it.

I do see a memorandum here which seems to me to reflect the flavor of those discussions accurately and differently from the way these gentlemen seem to recall it.

I don't know who wrote this memo for the record. I suspect it was Ed Proctor; but at any rate, it says there was a discussion with a gentleman named Phil Odeen, who was an appointed official at the NSC staff, who said about the hold item—the one we have been discussing—he said: "The hold situation was getting worse rather than better."

This next item is a statement by Mr. Duckett, another Deputy Director of CIA. He said, "At this point in time, the hold \* \* \* is still on"—this is July 1973—"and there is little likelihood that it will be lifted soon." Then they discussed the SALT monitoring report and Odeen gave instructions it should be published without this information which was being withheld.

It was at that point that I took objection to signing my name to a report which did not include information I knew to exist, but concerning which I could not brief anybody in the State Department except Mr. Rush.

The same memorandum, not written by me, reporting this conversation between CIA Deputy Director Duckett and Mr. Odeen of the NSC staff, says: "Although Rush recalled being briefed by Duckett on \* \* \* [deletion] shortly after they were discovered, his recollection was very vague. Rush had not realized that Secretary Rogers had not been briefed. Ray"—that is me, Director of INR—"reported that Rush was very concerned. \* \* \* Rush is to talk to Rogers and urge that Rogers talk to Kissinger to get permission to tell [Ambassador] Johnson and Graybeal."

Now, that particular little administrative channel—whereby the Secretary of State is illegally advised by his deputy and by me that some information is being withheld and he is urged to get permission from the Chairman of the Verification Panel—seems to me to be the kind of procedural chaos which existed concerning the handling of this very important intelligence at the time. That is what I am trying to direct attention to: Not the personalities concerned, nor the substance of the judgment, but to the fact that the reporting of the actual

existence of evidence, which on its face was disturbing, as to whether or not the Soviet Union was, in fact, complying with the spirit as well as the letter of the SALT Treaty, should be handled in this way seems to me to have been very unfortunate. And it is something which I would hope we would arrange not to have happen in the future.

Chairman PIKE. Mr. Proctor, you wanted to comment?

Mr. PROCTOR. I am the author of the memorandum Mr. Cline refers to.

Mr. CLINE. I never saw that until this morning, Ed, but it is a pretty good memorandum.

Mr. PROCTOR. It reflected, really, the concern of all of us about putting out a SALT monitoring report, that should have been comprehensive, without this item in it. The report did come out with that item in it. In fact, we have never issued a monitoring report that has not reflected all the information we have on SALT compliance for the period covered by that report.

Now, I think the pressure that we all brought resulted in an affirmation of that principle. Whether there was any question about it being so or not in the mind of Dr. Kissinger, I haven't the slightest idea; but I think the effect was made and that information was contained, as all the other information was, in the August 1973 edition of the SALT monitoring report. It was disseminated to about 20 senior officials, not at lower intelligence levels, but at senior official levels, including all members of the Verification Panel.

I have a dissemination list, if you wish, but it is quite complete without any question.

Mr. CLINE. When did it actually go out?

Mr. PROCTOR. In August; it was for the previous period.

Mr. CLINE. With information available in June.

Mr. PROCTOR. That is when it was scheduled to go out. The information that was available in June was still somewhat ambiguous, and I am not going to go into the substance of what it really meant. I don't think it is clarified even now. And that is why my statement is that it will be some time before the negotiations result in something definitive.

Chairman PIKE. Mr. Kasten.

Mr. KASTEN. Mr. Hyland, I want to put the nature of "hold" items and the whole question of limiting access of policymakers to material in some kind of perspective. We have an outline here that says that the nature of "hold" items and the practice of putting intelligence into "hold" items has increased somewhat during the last few years. Would you agree with that statement?

The use of "hold" items and limitations on access to information has increased somewhat during the last few years; is that correct?

Mr. HYLAND. I can't say one way or another, because I don't have any clear impression. I can remember "hold" items in the sixties—some very famous ones that have been alluded to, such as the Cuban missile crisis and the U-2. The number of individual items which Mr. Proctor says has increased—I will take his word for it.

Mr. KASTEN. Today we have talked primarily about the SALT agreements. Are there any limitations on access to material that are now taking place in addition to the SALT agreements? What kind of "hold" agreements are being made right now?

Mr. HYLAND. On intelligence?

Mr. KASTEN. Yes.

Mr. HYLAND. I know of none other than SALT, and there are no items on "hold" currently.

Mr. KASTEN. During the last several months, information has come to this committee and also to the press that certain policymakers are being excluded from information having to do with Angola. I would like you to respond to this. First, over the last several months, there has been, has there not, a substantial change in personnel in the Bureau of African Affairs within the Department of State? Is that correct?

Mr. HYLAND. I believe that there has been a change in the Assistant Secretary.

Mr. KASTEN. Along with these personnel changes, it is our understanding that orders have been issued severely limiting the distribution of classified cables and other documents relating to Angola to only a few of its key officials.

Has there been a change in the distribution of materials within the Bureau of African Affairs?

Mr. HYLAND. I can't speak as to how the Bureau of African Affairs did its business, because I was never in the Bureau.

Mr. KASTEN. Can you deny it?

Mr. HYLAND. I can't confirm or deny. I can only speak about my Bureau.

Mr. KASTEN. If it was going on in the Bureau of African Affairs, would it be through some mechanism other than the "hold" items?

Mr. HYLAND. No, not that I can think of offhand. I can say with almost certain knowledge that the Secretary and Deputy Assistant Secretary for African Affairs knew of all the intelligence that was available to the State Department.

Mr. KASTEN. In a broader context, it is our understanding also that within the State Department, the INR, there has been a change as to the number of officials who are receiving key information relating to Angola. In other words, there has been a cutoff within the Department of State, the INR, similar to the one that is taking place within the Bureau of African Affairs. Is that correct?

Mr. HYLAND. No, I don't think so. Certainly while I was there—and I was there until just recently—there was no cutoff of intelligence from the Bureau of Intelligence and Research.

Some of the policy papers concerning Angola would not be distributed downward beyond myself or the level of my deputies.

Mr. KASTEN. The key point is a change of policy, whether it is intelligence or policy information, in that certain key information was being given to a number of people; and now, most recently, it is no longer available to them. Is that correct?

Mr. HYLAND. No, sir; there was no change in procedure in the handling of intelligence on Angola in the 18 months or so I was there.

Mr. KASTEN. There have been no orders issued, either verbal or written, to limit information within either the Bureau of African Affairs or the State Department's INR. Is that your statement?

Mr. HYLAND. No; that is not my statement. There is a certain amount of information that is not disseminated downward throughout the entire Bureau. There are certain levels at which a division chief will be shown certain information and asked not—it is not really intelligence. It relates to different areas of activity.

Chairman PIKE. The time of the gentleman has expired. Mr. Hayes.  
Mr. HAYES. I think that Mr. Aspin was going to yield some time before.

Chairman PIKE. Mr. Aspin's time has expired. He has been recognized.

Mr. HAYES. I am sorry. Thank you, Mr. Chairman.

I had a couple of questions I had reviewed with staff, and I apologize to the chairman for missing the main part of the testimony. I wanted to ask these of Mr. Cline when he discussed the difficult time of getting the hold items. Apparently there is no mechanism at all available to review who made the decision to place an item on hold—no mechanism available at all to review the procedural or substantive reasons; is that correct?

Mr. CLINE. There was certainly no mechanism except the "Old Boy Network" available to me to get this decision reviewed. That is why I went to people I knew and why the response is a little vague in the record, because simply nothing happened as a result of my protest.

But I think the memos in the record show that the way you tried to get a change in procedures was to have someone who had access to a member of the NSC staff tell him that there was a problem.

Mr. HAYES. Mr. Cline, do you suggest that Congress ought to positively provide some kind of mechanism? Do we get ourselves into this area in a thorough way by way of recommendation—either legislation or report language?

Mr. CLINE. I don't want to suggest you try to prescribe administrative procedures in great detail. I think that would clearly be difficult and inappropriate. I do think the Congress should be sure that the procedures for handling strategic intelligence—that is, important intelligence bearing on our security and our policy—have certain checks and balances in them so that there is no possibility of suppression of information which is unattractive to policymakers.

That is a creed that all intelligence officers will subscribe to, and I think the machinery of Government which formally existed under the U.S. Intelligence Board and the National Security Council guaranteed that.

As I was leaving the Government, I found these procedures breaking down, and that is why I feel that the problem does deserve attention from the Congress.

Mr. HAYES. Mr. Proctor, doesn't the review of CIA reports by NSC really get directly to the integrity of particular agencies' intelligence products and compromise that integrity?

Mr. PROCTOR. It would if it were done. It was not done.

Mr. HAYES. And is not done at all?

Mr. PROCTOR. In the cases I know of, it is not done.

Mr. HAYES. I was under the misapprehension, then, that somehow CIA estimates of some matters very well may have been subject to review and subject to that kind of compromise by either NSC or other agencies.

Mr. PROCTOR. I can see how you could have gotten that impression from the documents you received. There are two documents in question. One is item 9 on the chairman's list, which is an unsigned transmittal memorandum to the NSC staff dated July 16, 1973. The record copy of that transmittal memorandum and the copy which the committee

received both show a notation by my secretary that the transmittal memorandum was never sent. At the bottom you will see "never sent" on the left-hand side and the top says, "Given to General Walters on July 16—he is holding."

The other document is item number 10, a log of events for the period July 13–20, 1973. The July 20 entry reflects an instruction to prepare a separate annex to the regular SALT monitoring report. This annex was to discuss the hold item. In fact, this was never done.

Instead, the hold on the information was lifted in time for the regular monitoring report to be issued on time, and it was also published in our general circulation of a Central Intelligence Bulletin of August 8, 1973.

Mr. HAYES. Is there an implication that there was pressure or internal heat on the "Old Boy Network" Mr. Cline has referred to, or other devices brought to bear to get the hold lifted?

Mr. PROCTOR. I think my memorandum of July 13, 1973, to the Acting Director and my log notes, item number 10, reflects that pressure. It wasn't through the "Old Boy Network." It was their rough command channels.

Chairman PIKE. The time of the gentleman has expired. Mr. Milford.

Mr. MILFORD. Thank you, Mr. Chairman. I have no questions, but, Mr. Chairman, at this time I would like to announce that I have corresponded with Gen. W. C. Westmoreland and submitted to the general a series of questions on matters that were brought up during the testimony of Mr. Samuel Adams before this committee.

I would ask unanimous consent to insert in the record my letter to General Westmoreland and his answer.

Chairman PIKE. Without objection, it is so ordered.

[The correspondence referred to is printed on pages 2005–2010 of the appendixes.]

Mr. DELLUMS. Would you yield to me?

Mr. MILFORD. I would be glad to yield.

Mr. DELLUMS. Thank you.

Certainly, alleged violations of the Strategic Arms Limitation agreement speak to the potential for increased strategic capability as an abstract thought.

Given that reality, I would like to ask Mr. Cline two questions:

No. 1, based upon that assertion, how then can keeping this kind of information from policymakers be justified and No. 2, in what way does this limit the capacity of the intelligence community to really measure the potential threat of increased strategic capabilities?

Mr. CLINE. Mr. Dellums, I would like to answer both questions at once, if I may describe the problem as I see it.

I think that the purpose of the SALT I agreement was to set a cap on the strategic capabilities of both nations—set a cap on the arms race was usually the term.

Now, the agreement which was made, particularly with the unilateral interpretations by the United States which were not agreed to by the Soviet Union, seems to put some rather severe limits on what the Soviet Union could do in building up its strategic armaments.



It was fairly apparent to me and to other members of the intelligence community, I believe—even while the agreement was being signed and certainly a year or so later—that in fact the Soviet Union was proceeding with some rather substantial changes in its strategic armaments in the missile field, by preparing to substitute larger missiles than they had had before, which I suspect will, when completed, make a serious difference in the capability of the Soviet Union in the strategic field.

Now, to answer your question directly, I think the essence of our intelligence estimating process is to evaluate what is the situation with respect to threats to this country of all kinds. The intelligence community was established by law to make those kinds of evaluations. The primary duty of the Director of Central Intelligence and the intelligence agencies coordinating their work with him, is to evaluate intelligence relating to the national security.

Mr. McCLORY. Would the gentleman from Texas yield to me for a question?

Mr. MILFORD. I would be glad to yield.

Mr. McCLORY. Thank you.

As a practical matter, Mr. Hyland, what happens when an item of intelligence or evidence of an alleged violation which is secured through intelligence is laid on the desk of the Secretary? What happens then?

Mr. HYLAND. I would say the normal response is for the Secretary to ask his staff, or to ask the Director directly, for certain further analysis and information. Almost every one of these reports, really, is the initial alerting report. Some of them turn out to be quite erroneous; some of them turn out to foreshadow something even more serious.

So the first question that really is asked is what else can you tell me about this; what else do we know; what further background?

Then, in the present system, a working group usually meets—maybe not immediately, but within some period of time—to begin discussing the policy aspects. What does this really mean? Is it significant? What could be the explanation from the Soviet side? Should we raise this with the Soviets? If we raise it, what are they likely to say? Would that be a satisfactory answer? What would be our counter reply, and so forth?

So there is a system for dealing with these things, and it is probably a good idea not to react always to the first report.

A rather sensational charge was made, I think, at this committee hearing, that has turned out to be wrong upon further investigation. That is one of the dangers of leaping with the first report, without having a chance to give it some thought.

So the fact that something is in a "hold" category for 30 or 60 days is not a critical aspect. The critical aspect is whether anything is being done about it. Is anyone thinking about it? Is more information being gathered and, in the end, what did the United States choose to do about it?

Chairman PIKE. The time of the gentleman has expired.

Mr. JOHNSON?

Mr. JOHNSON. I yield my time to you, Mr. Chairman.

Chairman PIKE. Thank you.

The testimony of Admiral Zumwalt which got the most attention in the press was the allegation that the President had not, in fact, been briefed. And, very frankly, I said at the time I had no knowledge of that, and I didn't believe Admiral Zumwalt had any knowledge of that, either.

But the allegation by Admiral Zumwalt which interested me the most is that there was, in fact, an agreement made between Dr. Kissinger and the Soviet Ambassador which was not made known to the intelligence community generally, and I think the Secretary of State in particular, at the time it was made—and it was revealed to Mr. U. Alexis Johnson in Geneva only by the Russians.

Mr. Hyland, is Admiral Zumwalt's testimony in that regard wrong?

Mr. HYLAND. I would say it is misleading.

Chairman PIKE. Is it not true that Mr. Alexis Johnson did find out about such an agreement—and I am talking about a signed document—from the Russians?

Mr. HYLAND. As far as I know, that is correct; yes.

Chairman PIKE. Well, you do know, don't you?

Admiral Zumwalt testified further that Alexis Johnson had cabled back to the White House saying in effect: "The Russians have mentioned an agreement of such and such a date. We have no record of it. What are they talking about?"

Now that is accurate, is it not?

Mr. HYLAND. Yes, sir.

Chairman PIKE. And it was 11 months after the date of the agreement when Alexis Johnson sent this cable back to the White House; is that not correct?

Mr. HYLAND. Yes.

Chairman PIKE. Are you saying that the testimony of Admiral Zumwalt is incorrect in that the subject matter of this agreement was known to the intelligence community and to Mr. Johnson, although the fact of a document was not? Is that the reconciliation?

Mr. HYLAND. That is the point I am trying to make. The substance of it, before there was such an agreement, was the American position insofar as the SALT agreements were concerned. It is the interpretation that was briefed to the Congress; it is the interpretation that was given to all administration witnesses; it is the interpretation made public at the time.

What led to the agreement between Dr. Kissinger and Ambassador Dobrynin was the fact that we were taking this position and the Russians, in effect, said that was not quite the way they understood it. Therefore we nailed it down.

Chairman PIKE. But why was the document kept secret after you nailed it down?

Mr. HYLAND. I personally cannot say why it was kept in any particular category; but it was not considered a major change—or in fact any change—in what had already been told all of the American officials, the U.S. Congress, and the world at large.

It was simply a confirmation of the position that we had taken, and it was considered advisable to put in down in writing and get a Russian signature on it.

Chairman PIKE. If you were Alexis Johnson and the Russians referred to an agreement that you didn't know anything about, wouldn't you feel that your position had been undermined?

Mr. HYLAND. Not necessarily. Alexis Johnson was not in charge of the SALT I negotiations. He had taken over for Gerard Smith, and he did what any official would do. He sent a cable saying, "What is going on?"

Chairman PIKE. Well, when our chief negotiator at SALT has to send a cable saying, "What is going on?" to find out about the existence of a document, how can you say, as the Secretary did, that there was no secret agreement?

Mr. HYLAND. I think he was referring to the word "secret." It was common knowledge that that was the interpretation and the position of the United States and that the Russians had agreed with it. The fact that a document existed somewhere was not the critical aspect.

And, in fact, Alex Johnson was negotiating SALT II. He was not charged with compliance concerning SALT I.

Chairman PIKE. Mr. Hyland, what does the designation NO DIS CHEROKEE mean?

Mr. HYLAND. NO DIS CHEROKEE is an acronym for no distribution or no dissemination. Cherokee is a category within that general subject. It is generally used as a means of restricting dissemination. It is a State Department—

Chairman PIKE. Mr. Field.

Mr. FIELD. Just to follow up, doesn't "Cherokee" refer to the Secretary of State?

Mr. HYLAND. It refers to the Secretary primarily; yes.

Mr. FIELD. NO DIS CHEROKEE is information related to him—

Mr. HYLAND. No. That is incorrect.

Mr. FIELD [continuing]. And/or people that he designates?

Mr. HYLAND. Or people designated by his secretariat which handles the cable traffic.

Mr. FIELD. I would like to discuss a number of elements about the "hold" item we have the memos on. Some of your testimony tends to belittle it on a number of grounds.

First, perhaps, on the ground that it was not on "hold" all that long. I would point out that the chairman has put in the record items that were on "hold" for 5 and 6 months. When we talked to Mr. Duckett and Dr. Proctor, they referred to a number of items that had been on "hold" for a long period of time.

The reason we are concentrating on this item is it is the only one for which we have internal discussion memorandums. It is not as though this was the longest period of time something was on "hold."

Mr. Hyland, you said that the idea that it was a supersecret matter was wrong. Was that because, in fact, we told the Russians about it twice before it came off of "hold"; that clearly it wasn't a supersecret matter since we had told the supposed adversaries about it in some detail and had received responses from them?

In light of that, why wasn't it then distributed to our people?

Mr. HYLAND. Which items are you talking about on this list? The second item?

Mr. FIELD. The July 13, 1973, memorandum.

Mr. HYLAND. I am saying it wasn't supersecret because the substance of this particular item dates back to 1971.

This particular development had been known by analysts and various officials. It was put on "hold" by the Director of CIA.

Mr. FIELD. But the Russians were told about it twice while it was on "hold."

Mr. HYLAND. That is the purpose of the system. If you decide not to do it, that is one decision.

Mr. FIELD. Who was it kept from?

Mr. HYLAND. As far as I am concerned, officials who made operational policy decisions were informed.

Mr. FIELD. That is not the question. Whom are we keeping it a secret from?

Mr. HYLAND. We are keeping a "hold" item secret from people who might read the Central Intelligence Bulletin, which is disseminated in several hundred copies.

Mr. FIELD. We tell the Russians.

Mr. HYLAND. Of course.

Mr. FIELD. Whom are we keeping it a secret from?

Mr. HYLAND. It is in a "hold" category, and kept from a number of people who have no policy responsibility in this area, who read and are cleared for intelligence——

Mr. FIELD. Such as the Secretary of State?

Mr. HYLAND. No; of course not. I am talking about the bureaucracy in general. There are hundreds and thousands of people who have secret clearances. They read the publications of the CIA. These items do not appear in that level of the publication. And there is no particular need for them to know of this.

Mr. FIELD. All right. And it doesn't appear in the President's daily intelligence bulletins?

Mr. HYLAND. It does.

Mr. FIELD. From the moment it is on "hold," it appears in those bulletins?

Mr. HYLAND. Not necessarily; no.

Mr. FIELD. Is that correct, Dr. Proctor, as long as it is on "hold"?

Mr. PROCTOR. Usually not.

Mr. FIELD. And yet we have the Secretary of State——

Mr. PROCTOR. The assumption, if I may, Mr. Field, is that he is informed on this matter through other channels.

Mr. FIELD. The Secretary of State in a new conference 8 days ago said:

In compiling a list of the various compliance issues, it is apparent that the President's daily bulletin would reflect the information of the Central Intelligence Agency, as you would expect, but within no more than 2 weeks of its first appearance on a technical level.

That is not correct; is it? These items did not appear in the President's daily bulletin within a matter of 2 weeks.

Mr. PROCTOR. This one did not.

Mr. FIELD. And the other items on "hold" did not as well; is that correct?

Mr. PROCTOR. Some of them.

Mr. HYLAND. Since you have gone over this entire list to point out the length of the gaps, could I add that as to the items that were read off by the chairman, four of them appeared before the December 17 release. They appeared in the SALT monitoring report which came out in September. The distance in time between the first report and when they were reported in a wider dissemination is not measured from December 17. And, in fact, Colby's memo says this information has obviously seeped out all over and we should have a formal release. I think this supports the point I was trying to make that a "hold" item is a way of alerting certain officials.

As time passes, the number of people at various levels who know about it just explodes.

Mr. FIELD. I don't have the time to go into that, but it is our understanding that they were still on "hold" as of December 17.

But I want to go back to the other point you made that Mr. Ray Cline should have verbally briefed the Secretary of State.

Mr. Proctor, your memo for the record of October 24, 1972 says:

In response to that, Ray Cline said that he must keep people like Rogers and Johnson informed about all substantive findings of the steering group when such findings are made \* \* \*. General Walters said that he realized that we "all live in a real world" indicating some sort of concurrence.

You say that means that Mr. Cline should feel free to go tell him verbally. Yet 8 or 9 months later, you are writing a memo saying:

I do think, however, that there is a strong case for informing Secretary of State Rogers, Ambassador Johnson, Commissioner Graybeal, and his Deputy SCC Commissioner, Brig. Gen. William Georgi. If desirable, they could be briefed orally. Indeed, a good case could be made for informing all of those on the select list of recipients of the USIB steering group SALT monitoring report.

If you thought 8 months earlier that he was free to brief them verbally, why are you making a good case for this 8 months later and implying they haven't yet been briefed? Obviously, you didn't advise Mr. Cline 8 months earlier that he was free to go back and tell them all these things.

Mr. PROCTOR. Eight months earlier—I certainly did.

Mr. FIELD. But you found out this hadn't been able to happen in those 8 months?

Mr. PROCTOR. Had not happened. Very frankly, if I were in Ray's position, having been told not to brief somebody whom I thought, as Ray says he did—

Mr. FIELD. So you agree with him that it is not appropriate to go outside the instructions?

Mr. PROCTOR. I would have gone to my superior in the line of command and eventually to the Secretary, as I went in the July 13 memo to my superior and said, in effect, "I can't tell you things and I am not going to tell you what it is. I think you have to talk to somebody in the White House about being told so I can tell you."

I don't know that Ray did that. I would have done it.

Mr. FIELD. Thank you, Mr. Chairman.

Chairman PIKE. All time has expired. Gentlemen, I think you have made your points. I think we have made our points. The committee will stand in recess until 10 a.m. tomorrow morning.

That will be an executive session. Would you make a motion on that?

Mr. McCLORY. Mr. Chairman, I move that the committee resolve itself into executive session and recess until 10 o'clock tomorrow morning.

Chairman PIKE. The clerk will call the roll.

The CLERK. Mr. Dellums.

Mr. DELLUMS. No.

The CLERK. Mr. Murphy.

Mr. MURPHY. Aye.

The CLERK. Mr. Milford.

Mr. MILFORD. Aye.

The CLERK. Mr. Hayes.

Mr. HAYES. Aye.

The CLERK. Mr. McClory.

Mr. McCLORY. Aye.

The CLERK. Mr. Treen.

Mr. TREEN. Aye.

The CLERK. Mr. Kasten.

Mr. KASTEN. Aye.

The CLERK. Mr. Johnson.

Mr. JOHNSON. Aye.

The CLERK. Chairman Pike.

Chairman PIKE. Aye.

By a vote of 8 ayes to 1 no, the committee stands in recess until tomorrow.

[Whereupon, at 12:14 p.m., the committee adjourned until 10 a.m., Thursday, December 18, 1975.]

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## APPENDIXES

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2

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4



1965

## APPENDIX I.-"JOURNALISTS DOUBLING AS CIA CONTACTS," BY OSWALD JOHNSTON (FROM THE "WASHINGTON STAR-NEWS," NOVEMBER 30, 1973

By Oswald Johnston  
Star-News Staff Writer

The Central Intelligence Agency has some three dozen American journalists working abroad on its payroll as undercover informants, some of them as full-time agents, the Star-News has learned.

After CIA director William E. Colby ordered a review of the practice two months ago, agency officials found the names of some 40 full-time reporters, free-lance journalists and correspondents for trade publications in their files as regular undercover contacts who supplied information to agents in the field and who are regularly paid for their services.

The use of foreign correspondents by the CIA has been quietly suspected--and feared--for years by legitimate reporters who have worked overseas. But the suspicion has never been verifiable until now. The facts were made known by an authoritative source.

The continuing extent of the practice and its wide scope, which is believed to have been scaled down since the Cold War tensions of the 1950's, was apparently a surprise even to Colby, who last month ordered a significant cutback in the CIA relationship with journalists connected with major news organizations.

No longer to remain on the agency payroll is the one category of journalist-agents whose continued existence could most seriously compromise the integrity of the American press in general and possibly cripple its ability to function overseas.

To be phased out is a small group of no more than five full-time staff correspondents with general-circulation news organizations who function as undercover contacts for the CIA and are paid for their services on a regular contractual basis.

It is understood that three of these agents have maintained their CIA contacts without the knowledge of the news organizations involved, but that the CIA sideline of the other two is known to their civilian employers.

Sources refused to identify any of the reporters involved, but it is understood that none of the five agents who are being cut off were regular staff correspondents of major American daily newspapers with regular overseas bureaus.

Colby is understood to have ordered the termination of this handful of journalist-agents in the full realization that CIA employment of reporters in a nation which prides itself on an independent press is a subject fraught with controversy.

Nevertheless, he has approved explicitly the continued maintenance of more than 30 other CIA agents abroad who are not strictly newsmen but who rely on some kind of journalistic "cover" for their intelligence operations.

Among those to be maintained is by far the largest category of journalist-agents: A group consisting of about 25 operatives scattered across the globe who appear to the world as free-lance magazine writers, "stringers" for newspapers, news-magazines and news services, and itinerant authors. (A stringer is a journalist, usually self-employed, who offers news dispatches on a piece-work basis to news organizations which do not have regular staff members in the stringer's city.

Agents in this category are not regularly identified with any single publication, and most of them are full-time informants who frankly use their writing or reporting as cover for their presence in a foreign city. Most of them are American citizens.

Most are paid directly and regularly for services rendered, but a few of these semi-independent free-lance writers occasionally draw on CIA funds to pay out-of-pocket expenses for trips in which the agency had an interest or for entertaining a useful contact.

A second group of overseas correspondents whom Colby intends to keep on the payroll consists of eight writers for small, limited-circulation specialty publications, such as certain types of trade journals or commercial newsletters. It is understood that most in this group operate as paid CIA informants with the approval of their employers.

Colby also intends to keep up the quiet, informal relationship the agency has built up over the years with many reporters working at home and abroad and editors who for their part maintain regular contact with CIA officials in the routine performance of their journalistic duties.

No money changes hands under these relationships, either as occasional payment or as reimbursement for expenses. In general, the relationship is limited to occasional lunches, interviews or telephone conversations during which information would be exchanged or verified. Each side understands that the other is pursuing only his own tasks.

In such a relationship, the reporter would be free to use the information he gained in a news story, and occasionally the CIA agent might make use of what he has learned from the reporter. Very likely, the CIA official would report the gist of his conversations with the reporter to his superiors, orally or in a written memo.

1967

-3-

In this group, sources indicated, the CIA includes Star-News reporter Jeremiah O'Leary whose name apparently found its way into agency files as a result of contacts of this professional type during assignment overseas for the Star-News.

(Star-News editors have discussed this matter with O'Leary and other sources and have found no evidence to suggest that either he or this newspaper has been compromised.)

Veteran intelligence operatives are understood to look with mixed feelings on Colby's decision to break off CIA contacts with legitimate full-time correspondents.

On the one hand, journalists operate under conditions that, in the eyes of a professional spy, provide a natural "cover", combined with unusually good access to people and places abroad that would be unavailable to persons in other professions.

The use of journalist-agents is known to be widespread in Communist-bloc countries where the press is government-controlled and during the 1950's the Tass correspondent who was also a Soviet agent was almost proverbial.

At the same time, agency officials are known to recognize that CIA penetration of the American press, if discovered or even suspected to exist on a wide scale, would further damage the CIA's shaky public image at home and could seriously compromise the reputation of the American press.

For both of these reasons, sources were extremely reluctant to give any details of the operations in which journalist-agents were involved or to discuss their assignments in any but the most general way. Sources who verified the existence of the practice refused to reveal how much the agents were paid or where they have been deployed.

Colby himself is thought to be solely responsible for the decision to cut off the CIA relationship with full-time staff correspondents for general news-gathering organizations.

During his Senate confirmation hearings last summer, Colby promised in the aftermath of the Watergate-related disclosures of domestic political espionage that he would take pains to operate "an American intelligence agency"--that is, one with operations compatible with a democratic society.

Colby's cutback on CIA use of the press is understood to have been governed by that promise.

Nevertheless, Colby has privately justified past use of the news media as agency cover by stressing that newsmen operatives were not as a rule used as vehicles for planting propaganda.

1968

-4-

As a matter of standard operating procedure, sources insist, an agent operating under cover as a free-lance writer or as a staff correspondent for a newspaper or news agency almost never had his news stories or articles "critiqued" by his case officer.

While propaganda admittedly has been an important part of clandestine CIA operations abroad, that function has been kept separate from the routine running of agents, even though both assignments belonged to the agency's Clandestine Services, under the Operations directorate.

Accordingly, the extensive network of dummy foundations through which the CIA was revealed in 1967 to have funneled cash to such publications as Encounter magazine or such organizations as the American Newspaper Guild was not related to the use of newsmen or writers as intelligence operatives in the field.

If anything, the use of newsmen in this way seems to have been carried out at the discretion of station chiefs abroad, with little or no central oversight.

Until late last summer, neither Colby himself nor the top officials in the Operations directorate had any precise information on how many clandestine agents were currently operating under journalistic cover.

During September, in the aftermath of revelations that the Nixon administration used journalists as paid political spies during the 1968 and 1972 presidential campaigns, and in response to queries from the press, Colby ordered an in-house investigation within the Clandestine Services to find out exactly what the situation was.

The specific impetus for the press inquiries, which in turn spurred Colby to order the Operations directorate to search its files, was the published disclosure that Seymour K. Friedin, a political spy for the 1972 Nixon campaign, regularly passed information to the CIA when working as a syndicated columnist in Europe during the 1950's.

1969

**APPENDIX II.—SUPPLEMENTAL MATERIAL SUBMITTED  
BY E. R. ZUMWALT, JR., ADMIRAL, U.S. NAVY (RET.),  
RELATIVE TO COMMITTEE HEARING OF DECEMBER 2,  
1975**



**E. R. ZUMWALT, JR.  
ADMIRAL, U. S. NAVY (RET.)**

6 January 1976

The Honorable Otis G. Pike  
Chairman, House Special Investigative  
Committee on Intelligence  
2428 Rayburn Building  
Washington, DC 20510

Dear Mr. Chairman:

As requested for use in the record of the hearing of the House Special Committee on Intelligence are some comments and observations on the 9 December 1975 news conference by the Secretary of State on SALT compliance. In the attached detailed analysis, the page numbers referred to are those of the official Department of State Press Conference, 9 December 1975, issued by the Bureau of Public Affairs.

As the attached analysis demonstrates, the Secretary of State's press conference provides a graphic example of the way in which the national security process, including the intelligence field, has been misused and the public and Congress misled by Dr. Kissinger.

This disinformation technique is dangerous and undemocratic. It is the principal cause, in my judgment, for the fact that the country at large has not been able to understand the dramatic nature of the shift in strategic balance nor Soviet objectives.

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1970

The true situation has best been stated by the nation's best living expert on the strategic and political field, the former Department of Defense Representative on the SALT delegation, former Deputy Secretary of Defense, former Secretary of the Navy, former Assistant Secretary of Defense (International Security Affairs), former head of the Policy Planning Council of the Department of State, Paul H. Nitze, who said in the January 1976 Foreign Affairs:

It appears to be the general belief that while such strategic stability may not be assured by the SALT agreements, it is not and will not be substantially endangered--that on the contrary it has been furthered by the SALT negotiations and agreements since 1969--and that in any event the best hope of stability lies in further pursuit of negotiations with the aim of reducing the level of strategic weapons and delivery systems on both sides. Unfortunately--and to the profound regret of one who has participated both in the SALT negotiations and in a series of earlier U.S. decisions designed to stabilize the nuclear balance--I believe that each of these conclusions is today without adequate foundation.

On the contrary, there is every prospect that under the terms of the SALT agreements the Soviet Union will continue to pursue a nuclear superiority that is not merely quantitative but designed to produce a theoretical war-winning capability. Further, there is a major risk that, if such a condition were achieved, the Soviet Union would adjust its policies and actions in ways that would undermine the present detente situation, with results that could only

1971

resurrect the danger of nuclear confrontation or,  
alternatively, increase the prospect of Soviet  
expansion through other means of pressure.

Sincerely,

  
E. R. ZUMWALT, JR.

Enclosure

1972

KISSINGER'S DECEMBER 9 PRESS CONFERENCE

p. 1

Kissinger: "no opportunity was presented to any member of the Administration to present the truth" (re Soviet compliance with SALT 1 agreements.)

Fact: Jackson's Arms Control Sub-Committee has repeatedly requested that Kissinger testify on these issues since last March. Schlesinger and Colby have already testified. Kissinger has consistently refused to put his own views on the record before Jackson's committee.

p. 2

Kissinger: "...there were forty meetings of the Verification Panel (since 1973) where whatever compliance issues existed at the time were brought to the attention of the Verification Panel."

Fact: The failure to brief intelligence on compliance issues to the VP promptly, thoroughly and objectively was a frequent source of concern among members from other agencies, particularly Defense, the JCS and CIA. There were occasions when it was necessary for Defense members to send memoranda to Kissinger noting this omission and specifically requesting that particular compliance issues receive a VP airing.

p. 2

Kissinger: "In all the meetings that I have described of the Verification Panel there was never a split decision... All the decisions of the Verification Panel with respect to compliance have been unanimous."

Fact: The VP did not (and does not) operate as a decision-making body -- this in accordance with Kissinger's specific wishes. It discusses issues; positions are presented by the agencies represented (often at variance amongst themselves, and with Kissinger's positions); there is never any voting; and members typically leave the sessions not knowing what decisions, if any, have been made. The first indication of decisions to emanate from VP meetings is given by promulgation of the National Security Decision Memorandum (NSDM), signed by Kissinger. These decisions are taken unilaterally by Kissinger, either with or without the President's knowledge and approval (we have no way of knowing the extent to which the President is typically brought into the NSDM process). Therefore it is a gross misrepresentation of the situation to imply that decisions are taken in the VP, and that such decisions have consistently been "Unanimous." There have been a variety of occasions when NSDM's have caused concern among other agencies represented on the VP, and those concerns/objections have been subsequently conveyed to Kissinger by the



agency been concerned. As a result of Kissinger's consistent failure to announce decisions in the VP meetings, Schlesinger, while Secretary of Defense, eventually came to insist that draft NSMs be forwarded to him by Kissinger for comment prior to their promulgation. Kissinger's compliance with this request was spotty. NSMs on trivial issues typically were referred to Schlesinger (but not to the JCS). NSMs on more significant issues often were not. And on the really big decisions (e.g., the Vladivostok agreement), no NSM was promulgated in advance.

p. 3

Kissinger: "...there is no memorandum in the files by any of these individuals (agency chiefs), by any Chief of Staff of any of the services, by any head of any department raising any of the issues that have been alluded in recent testimony."

Fact: Over the past two and a half years the Joint Chiefs of Staff have addressed well over a dozen memoranda to the President or his National Security Advisor on key SALT issues, including matters relating to interpretation of the agreements and Soviet compliance. In addition, Admiral Zumwalt, acting independently as Chief of Naval Operations, forwarded to the President in June, 1974, a lengthy memorandum expressing grave concern about a broad variety of then pending SALT issues.

p. 3

Kissinger: "There has been no reclamation of any of the decisions of the Verification Panel."

Fact: The comments above re the manner in which VP "decisions" are taken are pertinent here. Decisions reflected in specific NSMs have been reclaimed by VP members in official memoranda forwarded by them to Kissinger.

p. 3

Kissinger: "...the decisions of the Verification Panel have always been unanimous..."

Fact: See comments above.

Kissinger: "With respect to the handling of intelligence, all intelligence concerning alleged noncompliance was immediately distributed to all the members of the Verification Panel and by them to those of their senior members that were concerned with SALT."

1974

Fact: There were multiple occasions when intelligence was not "immediately" distributed to "all the members of the Verification Panel," and a variety of other occasions when such intelligence was not disseminated to senior staff members concerned with SALT. On most of these occasions the omission to disseminate the information was occasioned by a White House embargo on U.S. intelligence placed at Kissinger's direction. Examples are documented in CIA/NSC Staff memoranda distributed by the Pike Committee. The Director of ACDA, the Chairman and members of the Joint Chiefs of Staff, the Secretary of State (before Kissinger assumed that office), the Head of our SALT Delegation, and the JCS Representative to that Delegation were specifically excluded from distribution of SALT-related intelligence material for periods of days to months on the basis of "holds" placed on the material by Kissinger. In addition, chairmen of the relevant committees of Congress were denied such information even more frequently; and to this date have not been briefed on some of the key intelligence data bearing on Soviet compliance.

p. 4

Kissinger: "Our intelligence community believed that almost certainly there were command and control silos. The question being raised was whether, at some later time, they could be converted into missile silos."

Fact: This misstates the situation. The intelligence community was (and is) in error in that the silos are virtually identical to missile-launching silos in their construction and configuration. This is an important point because what the Interim Agreement limits is silos, not missiles. The Agreement is silent on the question of use to which the silos are placed; it simply addresses the number of silos capable of launching ICBMs which each side is allowed. The silos to which Kissinger refers were constructed to be capable of firing missiles. They do not currently have missiles in them, but are instead occupied by command and control modules which can be removed (estimates of the time required range from 48 hours to 7 days) and missiles substituted. Existing command and control facilities at the affected missile fields were not dismantled when the new command and control modules were placed in the new silos.

p. 4

Kissinger: "We received information that some testing was going on with respect to the SA-5 radar in 1973. At that time it was routinely distributed and nobody paid any attention to it because it was not put into connection with a possible ABM testing program."

Fact: The intelligence cited aroused substantial concern among knowledgeable officials in the intelligence and SALT communities. Among the most concerned was Paul Nitze who, until his resignation in 1975, was the Defense Department's representative on the U.S. SALT Delegation.

BEST AVAILABLE COPY

1975

Kissinger: "Between April and June 1974 some more tests took place which at least raised the problem that the radar might be tracking incoming missiles."

Fact: A CIA report of 5 July 1974, released by the Pike Committee, stated that "The Soviets are probably tracking ballistic missiles during re-entry with a signal similar to that used by the SA-5 air defense radar."

Kissinger: "The first decision (in the Verification Panel) was, on the recommendation of the Defense Department and the Central Intelligence Agency, that this (SA-5) issue not be raised because we did not wish to reveal the source of our intelligence."

Fact: Some concern was expressed in the VP regarding revelation of intelligence sources, but the DOD position, clearly expressed, was that the arguments on balance favored our taking the issue up with the Russians in the strongest possible terms. After the VP meeting Kissinger issued a decision that the issue would not be raised. Thereupon DOD (in a memorandum signed by Clements) reclaimed that decision, and reiterated the DOD view that the issue should be raised. Kissinger distorts the facts by going on to say:

"In January 1975, the Defense Department reversed itself and recommended that the issue be raised."

He then relates that the issue was raised in February 1975 and "within a 17-day period after we had raised the issue, this activity has stopped..." What he omits to note is that the activity had gone on -- unprotected -- for about a year and a half during which the Soviets conducted dozens of tests of the type proscribed by the ABM treaty, and probably collected more than enough data to allow them to break out of the Treaty rapidly by deploying SA-5's in an ABM mode. U.S. experts state that if we had tested a system with the frequency that the Soviets tested the SA-5 in the ABM mode, we would have had a high degree of confidence on which to base a deployment decision. -

Kissinger: (Referring to the Unilateral U.S. Statement regarding deployments of additional heavy missiles) "I think it is at least open to question whether the United States can hold the Soviet Union responsible for its own statements when the Soviet Union has asserted that it does not accept that interpretation."

1976

Fact: Kissinger is totally reversing the position he took in 1972, when he told Congressmen assembled in the White House that the Interim Agreement prohibited the deployment of additional heavy missiles; that we had made this clear to the Soviets; and that he was confident the Soviets would not circumvent the agreement in this manner.

This statement, quoted in the Senate report of March 6, 1975, hearings before the Subcommittee on Arms Control (p. 19) goes on to say:

"The agreement specifically permits the modernization of weapons. There are, however, a number of safeguards. First, there is the safeguard that no missile larger than the heaviest light missile that now exists can be substituted..."

Despite Kissinger's 1972 assurances on this score, this is precisely what has happened. The Soviets have deployed the SS-19 in large quantities; and it is a missile 50' larger in volume than the SS-11 which it replaces. The SS-11 was the heaviest Soviet light missile existing at the time of the Interim Agreement, hence specifically proscribed from upgrading in size by the Agreement, a fact made completely clear by the U.S. Unilateral Statement at that time.

Kissinger: "It stands to reason that the United States would not accept noncompliance with an agreement that had any conceivable impact on the strategic equation."

Fact: Soviet deployment of the SS-19, in contravention of the Interim Agreement, has affected a major shift in the strategic balance to the U.S.'s disadvantage.

Fact: Mr. Helms indicated in his Senate testimony that the Soviets had been informed that "significantly greater" meant an increase to 70 cubic meters from 65 cubic meters. The testimony of Helms is consistent with President Nixon's letter forwarding the May 1972 agreements to the Senate.

p. 5

Kissinger: "...there was no secret agreement ... whatever there was in that interpretative statement was stated publicly by me at the press conference that I gave in Moscow the night the SALT agreement was signed on May 26, 1972. It was repeated in a discussion of the Verification Panel on June 5, 1972. It was contained, practically verbatim, in a note distributed to all the agencies on June 19, 1972, and it was testified to by Gerard Smith before the Jackson committee in July 1972. There was no secret agreement."

1977

Fact: This is a total misrepresentation of the situation and contains seven separate errors of fact. The language of the secret agreement, which opened a loophole to the Soviets which we subsequently had to close by lengthy negotiation, was never revealed to the senior officials of the government concerned by SALT until the Soviets mentioned its existence to Paul Nitze, prompting him to query Washington about its specific terms.

Kissinger: "Some overawed technocrats found what they thought was a loophole by which, if the Soviets wanted to design a missile that they didn't have anywhere for just that one category of diesel submarines ... they might conceivably place it on that submarine. We, of course, would never have accepted this."

Fact: The Soviets did, in fact, design a new missile and test it from a GOLF- class submarine -- the type to which the secret agreement's loophole pertained. That nuclear-armed missile capable of use against coastal targets or naval forces. Contrary to Kissinger's assertion that "we---never would have accepted this," we did, in fact, accept it and never protested the issue to the Russians.

Kissinger: "...let me state flatly that no price was paid for closing a loophole that did not exist..."

Fact: The loophole was closed as part of a package negotiation involving concessions by both the U.S. and the Soviets. For this reason it is difficult to identify the precise U.S. concession which induced the Russians to close the loophole. It is an unquestioned fact, however, that the Russians used the loophole's existence for negotiating leverage, refusing for many months to close it until there was movement in the U.S. position on other issues.

p. 7

Kissinger: "There is not one paragraph in that document (the SALT 1 agreements) that was drafted by any other group than the negotiating teams in Helsinki."

Fact: Key provisions of the agreement were negotiated in Moscow, during the last 24 hours before its signing, by Kissinger and his Soviet counterparts. It is the Kissinger-drafted language that has been the source of much difficulty since.

Kissinger: "So that the charge the documents were drafted in the absence of technical advisers is absolutely ludicrous."

Fact: See above. Kissinger had no military representatives or other technically competent personnel with him at the time of his final negotiations with the Russians.

Kissinger: "This is the only legal requirement of the agreement, that is, if either side increased any of its silos by more than 15 percent, it would be in violation of the agreement."

Fact: There are two legal requirements of the agreement: the one to which Kissinger refers, and the requirement that neither side exceed the number of heavy missiles it had at the time of the agreement's signature. It is the latter provision that the Russians have violated by their SS-9 deployments.

p. 8

Kissinger: "...it became apparent that at least one of them, one SS-19, could be as much as 10% larger (than the missile it replaced)."

Fact: The correct figure is more than 50% larger.

Kissinger: "We obviously did not know in 1972 what missiles the Soviet Union would be testing in 1974; and the questions I was asked were always concerned with whether the Soviet Union would be able to put the SS-9 into the SS-11 hole."

Fact: Senator Jackson was keenly concerned about the Soviets' upgrading the throw-weight of their missiles, and questioned Kissinger closely on this score, producing the assurances (quoted earlier) from Kissinger that the Agreement precluded upgrading of light missiles with missiles any heavier.

p. 9

Kissinger: "None of those (Soviet actions to degrade our national means of verification) have fundamentally interfered with our national means of detection...nothing has decisively interfered with our national means of detection."

Fact: This represents a judgment by Kissinger; and one with which informed observers would disagree. In any event, the issue is not whether they have "fundamentally" or "decisively" interfered, but whether they have interfered at all -- an act proscribed absolutely by both the ABM Treaty and the Interim Agreement.

1979

Kissinger: "Why it (the secret version) was not distributed, I cannot for the life of me remember now."

Fact: A year ago, in a State Department press conference, Kissinger stated that the agreement was not distributed because the Soviets requested that it be kept secret.

pp. 9-10

Kissinger: "...the reader in Kazakhstan faces the Soviet Union and not the United States. And, therefore, we are dealing with a test range. The ABM treaty requires that ABM testing could take place only at agreed test ranges and no test cars. The Soviet Union didn't like theirs."

Fact: On May 5, 1972, the Soviet delegation stated that "there was a common understanding in 1967 ABM test ranges were, ...and that national means permitted identifying current test ranges." The Pechatka area was and is not an agreed test range for ABM development.

Kissinger: "So here we are dealing with a technical issue of what an agreed test range is..."

Fact: A more accurate statement would be that the Soviets were doing ABM development at a non-agreed test range. Therefore, the issue is one of fundamental non-compliance - a violation - not merely a technical issue.

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**APPENDIX III.—EXCERPTS FROM SPECIAL NATIONAL  
INTELLIGENCE ESTIMATE NO. 14.3-67, "CAPABILITIES  
OF THE VIETNAMESE COMMUNISTS FOR FIGHTING IN  
SOUTH VIETNAM"—NOVEMBER 13, 1967**

TS 186035  
SNIE 14.3-67  
13 November 1967

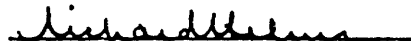
**SPECIAL  
NATIONAL INTELLIGENCE ESTIMATE  
NUMBER 14.3-67**

**Capabilities of the Vietnamese  
Communists for Fighting in  
South Vietnam**

Submitted by

DECLASSIFIED BY 014522

1 December 1975



DIRECTOR OF CENTRAL INTELLIGENCE

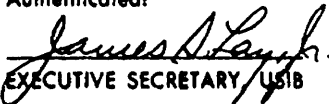
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UNITED STATES INTELLIGENCE BOARD

As indicated overleaf

13 November 1967

Authenticated:

  
EXECUTIVE SECRETARY, USIB

Pages 27

Copy No.

# CAPABILITIES OF THE VIETNAMESE COMMUNISTS FOR FIGHTING IN SOUTH VIETNAM

## THE PROBLEM

To estimate the capabilities of the Vietnamese Communists to conduct military operations in South Vietnam over the next year or so.<sup>2</sup>

## INTRODUCTORY NOTE

Our earlier understanding of overall Communist capabilities in Vietnam had, of necessity, to rely heavily on data provided by the GVN. Much of this turned out to be unreliable, and in many instances our numerical estimates of Communist forces, other than for the Regular units, were too low. Our information has improved substantially in the past year or two, but the unconventional nature of the war poses difficult intelligence problems, the more so in a social environment where basic data is incomplete and often untrustworthy.

Manpower, for example, is a key element for the Communists but we lack precise basic data on population size, rates of growth, and age distribution for both North and South Vietnam. Assessing Communist capabilities also involves an understanding of the organization and effectiveness of the various components in the Communist military and political apparatus in South Vietnam. Much of the evidence on these components is obtained from a variety of sources, including captured documents, of varying reliability and timeliness. The analysis of this data, as well as that concerning North Vietnamese support to the South and all manpower questions requires complex methodological approaches which cannot rise above the uncertain data inputs.

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<sup>2</sup> The figures in this estimate are current as of 1 October 1967.

Our data and conclusions are therefore subject to continuing review and revision, especially since capabilities do not remain static. In this estimate we have concentrated on reaching the best judgments of the current strength of the Communist forces and, because of incomplete and unreliable basic data, we have not attempted to reconstruct Communist strength retrospectively.

Reservations with respect to evidence are explained where appropriate in the individual sections of the estimate. The main conclusions which follow, however, allow for such uncertainties in the supporting intelligence, represent our best appreciation of the overall situation as it now stands, and are based on the assumption that there is no radical change in the scale and nature of the war.

## CONCLUSIONS

A. During the past year, Hanoi's direct control and share of the burden of the war in South Vietnam has grown substantially. This trend will continue.

B. Manpower is a major problem confronting the Communists. Losses have been increasing and recruitment in South Vietnam is becoming more difficult. Despite heavy infiltration from North Vietnam, the strength of the Communist military forces and political organizations in South Vietnam declined in the last year.

C. The major portion of this decline has probably been felt at the lower levels, reflecting a deliberate policy of sacrificing these levels to maintain the structure of political cadres and the strength of the Regular military forces. In particular the guerrillas, now estimated to total some 70,000-90,000, have suffered a substantial reduction since the estimated peak of about early 1966. Regular force strength, now estimated at 118,000, has declined only slightly, but Viet Cong (VC) units are increasingly dependent upon North Vietnamese replacements.

D. Given current Communist strategy, and levels of operations, a major effort will be necessary if the Regular forces and the guerrillas are to be maintained at or near present levels. To do so will require both a level of infiltration much higher than that observed in 1967 and intensive VC recruitment as well. Considering all the relevant factors, however, we believe there is a fairly good chance that the

overall strength and effectiveness of the military forces and the political infrastructure will continue to decline.

E. The Communist leadership is already having problems in maintaining morale and quality. These problems have not yet impaired overall military effectiveness, but they are likely to become more difficult.

F. Difficulties in internal distribution will continue to cause local shortages and interfere with Communist operations from time to time. But we believe that the Communists will be able to continue to meet at least their essential supply requirement for the level of forces and activities in South Vietnam described in this estimate.

G. Communist strategy is to sustain a protracted war of attrition and to persuade the US that it must pull out or settle on Hanoi's terms. Our judgment is that the Communists still retain adequate capabilities to support this strategy for at least another year. Whether or not Hanoi does in fact persist with this strategy depends not only on its capabilities to do so, but on a number of political and international considerations not treated in this estimate.

## II. THE MILITARY SITUATION IN THE SOUTH

### A. Communist Forces

23. For the purpose of this estimate, we consider the following elements of the Communist organization in South Vietnam: the Regular forces (NVA and VC Main and Local forces), the administrative service units which support them, the VC guerrilla forces, the political cadres, the self-defense forces, the secret self-defense forces, and the "Assault Youth." The contribution of these diverse elements to the Communist effort in South Vietnam differs widely in value. Their capabilities and missions are set forth in the following paragraphs.

24. We believe that, with the exception of the Regular forces, we have previously underestimated the strength of these elements. The figures carried in this estimate for these elements reflect new information and analysis rather than an increase in actual Communist strength. Furthermore, our information on the strength and organization of the different elements varies widely. For the Regular forces it is good; for other components it is much less reliable, less current, and less detailed. The resulting uncertainties are explained in the following paragraphs and are reflected by the use of ranges in the estimates we present.

25. *Regular Forces.* We are reasonably confident that the Communist Regular forces in South Vietnam now total about 118,000 troops who are generally well-armed (see Table 3). This strength has fluctuated over the past 12 months; it is now somewhat less than it was at this time last year. During this period,

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however, an increasing number of NVA replacements have been introduced into VC Main force units.

TABLE 3

ESTIMATED STRENGTH OF REGULAR COMMUNIST FORCES IN SOUTH VIETNAM  
(As of 1 October 1967)

Type	Number	Organization
Regular NVA Forces	54,000	3 Front Headquarters <sup>a</sup> 7 Division Headquarters <sup>b</sup> 26 Regiments (18 divisional and 8 separate) 106 Battalions (76 regimental and 30 separate)
VC Main and Local Forces	64,000 <sup>c</sup>	2 Division Headquarters <sup>b</sup> 11 Regiments (7 divisional and 4 separate) 96 Battalions (34 regimental and 62 separate) 234 Separate Companies 54 Separate Platoons
<b>TOTAL</b>	<b>118,000</b>	

<sup>a</sup> A Front is a military organization designed to perform tactical and administrative functions and to control a number of units in a specific area. A Front is intentionally flexible, its military force composition changes as operational requirements dictate. Vietnamese Communist Fronts currently operating against South Vietnam are the B-3 Front, the DMZ Front, and the Northern Front or Subregion (now called the Tri-Thien-Hue Military Region). (See map on page 17.)

<sup>b</sup> NVA/VC divisions in South Vietnam are considered as light infantry divisions tailored specifically for operation in South Vietnam. These divisions are highly foot-mobile and are flexible in force structure, organization, and strength. They normally are composed of three regiments (of about 1,500-2,000 per regiment) with varying technical and fire support elements. They lack wheeled transport and the type of artillery normally associated with NVA conventional divisions.

<sup>c</sup> In addition to the seven NVA divisions in South Vietnam, elements of the 341st division in North Vietnam have been committed from time to time to operations south of the DMZ under control of the DMZ Front.

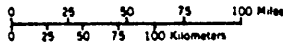
<sup>d</sup> This total includes some NVA replacements; see paragraph 58.

26. *Administrative Service Units.* There is an extensive system for the administrative support of both NVA and VC Regular forces. It operates throughout South Vietnam and extends into Laos and Cambodia as well as the area immediately north of the DMZ. In South Vietnam it includes the military personnel in the staff and service elements (e.g., medics, ordnance, logistics, etc.) comprising the central, regional, provincial and district military headquarters, and in rear service technical units of all types directly subordinate to these headquarters. The need for administrative service forces, and hence their size, varies widely from province to province.

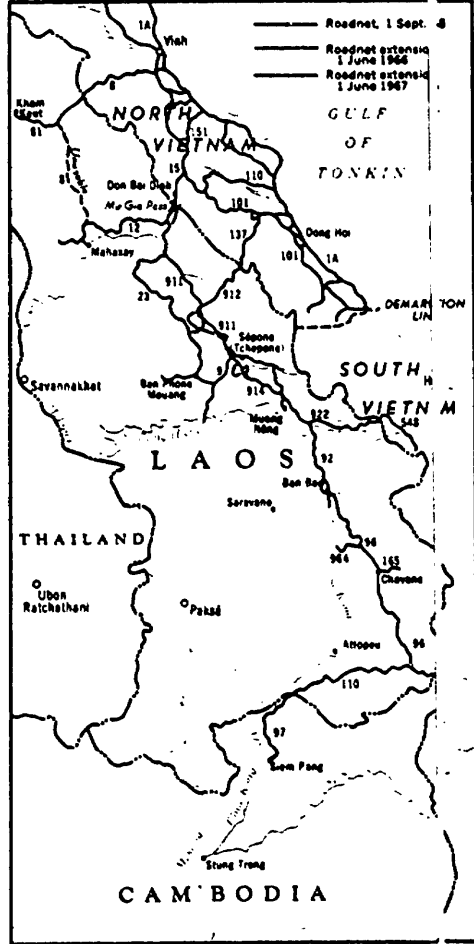
27. We cannot be confident of the total size of the administrative service forces at any given time. Information on the current strength of the administrative services at the various echelons is insufficient to establish a firm estimate. This force has almost certainly suffered attrition and has probably been drawn down to provide some combat replacements. Moreover, we do not estimate

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## LAOS PANHANDLE AREA COMMUNIST ROADNET

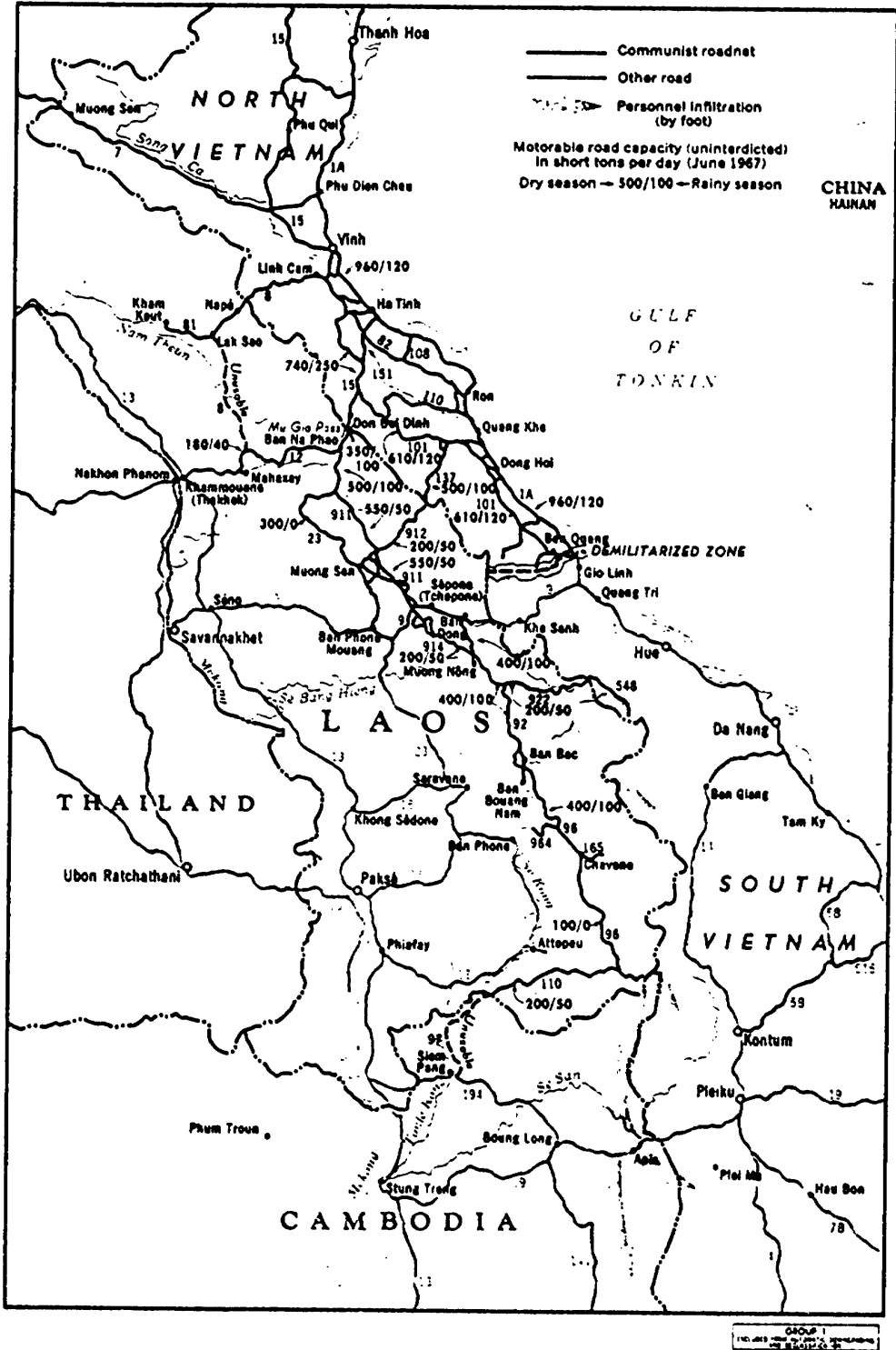


### EXPANSION OF THE COMMUNIST ROADNET



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## INFILTRATION AND ROAD CAPACITIES





the size of the administrative service units located outside the boundaries of South Vietnam which support the forces in the DMZ and the western highlands. In light of these considerations, we estimate that there are now at least 35,000-40,000 administrative service personnel in South Vietnam who are performing essential administrative support functions. In addition, almost anyone under VC control can be and is impressed into service to perform specific administrative or support tasks as local conditions require.

28. *Guerrillas.* The guerrillas provide an essential element of the VC combat capability. They are organized into squads and platoons which are not necessarily restricted to their home village or hamlet. Typical missions for guerrillas are terrorist and sabotage activities, protection of villages and hamlets, provision of assistance to VC Main and Local force units as well as NVA, and the creation of local threats in order to divert allied forces to local security missions.

29. The guerrilla force has been subject to conflicting pressures. On the one hand, increasing numbers of guerrillas have been drawn upon to provide replacements for the VC Main and Local forces, because these have suffered heavy casualties as a result of more intense combat. At the same time, numerous captured documents as well as VC propaganda indicate a concern to increase the guerrilla force substantially. There is evidence which suggests that the leadership set very high force goals for the guerrillas but had, by mid-1966, fallen far short of its aims.

30. Information from captured documents leads us to believe that we have previously underestimated the guerrilla strength. Certain Communist documents which date from early 1966 assert that there were then about 170,000-180,000 guerrillas. This figure was almost certainly exaggerated. There is evidence which suggests that the Communists sometimes consider other groups part of the guerrilla force and therefore carry a larger number of guerrillas on their rolls. There is also considerable uncertainty over the accuracy of VC reporting at the lower levels. We believe that guerrilla strength has declined over the past year or so because of losses, upgrading of some personnel to Main and Local force units, and recruiting difficulties. We are unable to substantiate the extent to which the VC have been able to replace guerrilla losses. Considering all the available evidence and allowing for some uncertainties, we estimate that the current strength of the guerrilla force is 70,000-90,000.

31. *The Political Organization.* Presiding over the Communist effort is the political apparatus. This includes the leadership and administration of the National Liberation Front (NLF) and the People's Revolutionary Party (the name under which the North Vietnamese Communist Party operates in South Vietnam), both of which extend down to the hamlet level. The apparatus not only acts as a government in VC-controlled areas but also has major responsibilities for maintaining morale and for mobilizing manpower and other resources in support of the war effort. Its functions are not primarily military and it is therefore not included in the military order of battle. Nevertheless, it does represent a continuing potential for organizing and motivating the military forces. Through this apparatus the Communists seek to control the people of

South Vietnam. It is, therefore, a key element which ultimately will have to be overcome along with the military and guerrilla forces. Its numbers are large—with a hard core estimated at about 75,000-85,000—but more important is the wide geographical extent of its power and the dedication and effectiveness of its personnel.

32. *Other Communist Organizations.* The Communists make a deliberate effort to organize most of the people under their control into various work forces and semimilitary organizations. Among the more significant of these organizations are the self-defense forces, secret self-defense forces, and groups such as the "Assault Youth." Moreover, when occasion demands, almost every able-bodied person under VC control may be called upon to support the war effort.

33. The self-defense force is described by the Communists as a military organization. It is clear, however, that its organization and mission differ from that of village and hamlet guerrillas. Self-defense forces include people of all ages and a substantial percentage of them are females. They are largely unarmed and only partially trained. The duties of self-defense units include the maintenance of law and order, the construction of bunkers and strong points, warning against the approach of allied forces, and the defense of villages and hamlets in VC-controlled territory. Self-defense forces do not leave their home areas, and members generally perform their duties part-time. Their existence poses an impediment to allied sweeps and pacification, however, and in their defensive role, they inflict casualties on allied forces.

34. Another element, the secret self-defense forces, operates in government-controlled and contested areas. They provide a residual Communist presence in such areas and support the Communist effort primarily by clandestine intelligence activities.

35. During the past year we have learned more about a VC organization called "Assault Youth." They serve full time at district level and above, and they are organized into companies and platoons. Although some are armed, the Communists do not consider them a combat force; their primary mission appears to be logistical, frequently in battlefield areas. This organization also serves as a manpower pool and provides a training program for youth who later go into the VC Main and Local forces. Little information is available to indicate the strength or distribution of the "Assault Youth."

36. Our current evidence does not enable us to estimate the present size of these groups (self-defense, secret self-defense, the "Assault Youth," or other similar VC organizations) with any measure of confidence. Some documents suggest that in early 1966 the aggregate size of the self-defense force was on the order of 150,000. This force and the other groups, however, have unquestionably suffered substantial attrition since that time, as well as an appreciable decline in quality, because of losses, recruiting of some of their members into the guer-

rillas or other VC military components and, particularly, the shrinkage in VC control of populated areas. Though in aggregate numbers these groups are still large and constitute a part of the overall Communist effort, they are not offensive military forces. Hence, they are not included in the military order of battle total. Nevertheless, some of their members account for a part of the total Communist military losses.

37. In sum, the Communist military and political organization is complex, and its aggregate numerical size cannot be estimated with confidence. Moreover, any such aggregate total would be misleading since it would involve adding components that have widely different missions and degrees of skill or dedication. The VC/NVA Military Force (Main and Local forces, administrative service elements and guerrillas) can be meaningfully presented in numerical totals and, as indicated above, we estimate that this Military Force is now at least 223,000-248,000. It must be recognized, however, that this Military Force constitutes but one component of the total Communist organization. Any comprehensive judgment of Communist capabilities in South Vietnam must embrace the effectiveness of all the elements which comprise that organization, the total size of which is of course considerably greater than the figure given for the Military Force.

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# **APPENDIX IV.—EXCERPTS FROM “INTELLIGENCE WARNING OF THE TET OFFENSIVE IN SOUTH VIETNAM”— APRIL 11, 1968**

[Dated April 11, 1968--Declassified by 009606 December 3, 1975]

## **INTELLIGENCE WARNING OF THE TET OFFENSIVE IN SOUTH VIETNAM**

(Interim Report)

### **A. Procedures**

1. A working group has been formed under the chairmanship of R. J. Smith, on which CIA, DIA, INR, NSA, and the Joint Staff are represented. This group has compiled dossiers on the raw intelligence information and intelligence summaries and judgments received in various US headquarters before Tet, with emphasis on the period 15-30 January 1968, and on the finished intelligence disseminated to senior officers of the government as a result.

2. Representatives of the group from CIA, DIA, and the Joint Staff visited Vietnam from 16 to 23 March. They were joined there by observers from CINCPAC, MACV, and the CIA station in Saigon. In addition to collecting a large quantity of pertinent documents, the delegation received briefings and conducted interviews, both in Saigon and the field, with many senior officials, US and Vietnamese. On the US side, members of the delegation talked to Ambassador Bunker, General Westmoreland, General Abrams, Ambassador Komer, Lt. General Cushman, Lt. General Rosson, Maj. General Peers, Maj. General Eckhardt, and the commanding generals of 1st Marine Division and 4th Infantry Division. They also interviewed the G-2s of I and II Field Forces and the G-2 of III Marine Amphibious Force, and the G-2 advisers and the CIA Regional officers in all four Corps Tactical Zones (CTZs). They were briefed extensively by MACV J-2 and by the CIA station in Saigon, and contacted the Director of Intelligence, Seventh Air Force, NSA Representative Vietnam, and the Army Headquarters Area Command in Saigon. On the Vietnamese side, they interviewed the commanding generals of I and II Corps, J-2 of the Joint General Staff and his deputy, and the deputy director of National Police. In the course of these discussions members of the group visited Phu Bai, Da Nang, Pleiku, Camp Enari, Nha Trang, Bien Hoa, Long Binh, and Can Tho.

## B. General Findings

3. As the DCI informed the President's Foreign Intelligence Advisory Board in February, there was evidence, both in Saigon and in Washington, that the enemy was engaging in his much-advertised "winter-spring campaign" and was preparing for a series of coordinated attacks, probably on a larger scale than ever before. There was evidence in January that some attacks in the highlands might be conducted during the Tet holiday. In the latter part of the month it was evident that other attacks were imminent, and some of the targets had been identified. Both in Saigon and in Washington this intelligence was communicated to senior military and political officers. As a result, a series of actions were taken in Vietnam which reduced the impact of the enemy offensive.

4. The warning thus provided represents no small achievement for the US intelligence apparatus in Vietnam. It has no high-level clandestine penetrations of the Communist hierarchy

| It must therefore rely on classic indications techniques. This is difficult under any circumstances. The intelligence organization itself, military and civil, US and Vietnamese, is complex and the volume of material it handles is large. Thus, the recognition of significant reports from human sources through the blare of background noise presents a major problem. Moreover, the very nature of the war leads to the "crying wolf" syndrome. We have little doubt that at some level of the intelligence apparatus low-level reports could be found forecasting many of the attacks made at Tet; we have equally little doubt that similar reports could be found alluding to attacks on many other cities and on many other dates.

5. The enemy took great pains to conceal his intentions. Knowledge of his plans was fully compartmented and the actual attack order was disseminated to attacking units only in the final 24 to 72 hours. Although US and Vietnamese authorities received some reports of individual attack plans, probably no Communist officer below the

level of COSVN, front, or military region was aware of the full scope of the offensive. General Westmoreland believes the Communists sacrificed coordination for security, and this is evident in the premature attacks by units of Military Region 5 (MR 5) on the night of 29-30 January, attacks which served to alert the US command to the much more extensive attacks on the following night.

6. Despite enemy security measures, communications intelligence was able to provide clear warning that attacks, probably on a larger scale than ever before, were in the offing.

| These messages appeared in many areas of South Vietnam. They included references to impending attacks, more widespread and numerous than seen before. Moreover, they indicated a sense of urgency, along with an emphasis on thorough planning and secrecy not previously seen in such communications. These messages,

| served both to validate information from other sources in the hands of local authorities and to provide warning to senior officials. The indicators, however, were not sufficient to predict the exact timing of the attack.

### C. Impact of the Enemy Offensive

7. Although warning had thus been provided, the intensity, coordination, and timing of the enemy attack were not fully anticipated. Ambassador Bunker and General Westmoreland attest to this. The most important factor was timing. Few US or GVN officials believed the enemy would attack during Tet, nor did the Vietnamese public. There was good reason for this: Tet symbolizes the solidarity of the Vietnamese people. It is the most important holiday in Vietnam, an occasion observed by all members of every family whether they are Buddhist, Christian, or Communist. The Communists evidently believed they could exploit this solidarity to produce an antigovernment, antiforeign, antiwar uprising. This did not take place. The enemy therefore paid a price in the antagonisms he generated among the urban population,

but he gained enormously in two ways: The GVN's army and police were generally far below their usual state of readiness, and the precedent of Tet made it possible for large numbers of VC to enter the cities without causing alarm. General Westmoreland expected heavy attacks either just before or just after Tet, and as Tet approached and major attacks had not materialized, the Vietnamese Joint General Staff had authorized 50 percent leaves. Evidence to upset this general belief did not come to hand until 24 hours or so before the attacks were launched, the most important being the premature initiatives in MR-5. The latter brought the intelligence already available into sharp focus and provided the missing element of timing. In the short time available, US and ARVN units could be alerted and were, but ARVN performance was reduced in many areas by Tet leaves.

8. A second major unexpected element was the number of simultaneous attacks mounted. US intelligence had given the enemy a capability of attacking virtually all of the points which he did in fact attack and of mounting coordinated attacks in a number of areas. He was not, however, granted a specific capability for coordinated attacks in all areas at once. More important, the nature of the targets was not anticipated. Washington and Saigon expected attacks on some cities, but they did not expect the offensive to have the cities, the civilian command and control centers, radio stations and police headquarters as primary objectives. Finally, the quantity of new, modern weapons in the hands of Main and Local Force Viet Cong who engaged in the attacks was higher than expected. The AK-47 rifle and RPG-7 antitank grenade were particularly effective against ARVN units and the Regional and Popular Forces.

9. Underlying these specific problems was a more basic one: most commanders and intelligence officers, at all levels, did not visualize the enemy as capable of accomplishing his stated goals as they appeared in propaganda and in captured documents. Prevailing estimates of attrition, infiltration, and local recruitment, reports of low morale,



and a long series of defeats had degraded our image of the enemy. The general picture presented was an enemy unable to conduct an offensive of such scope and intensity. Commanders and intelligence officers saw his generalized calls for a "general uprising" as merely exhortatory, and not as a blueprint for what was to follow. Moreover, in the past many "great offensives" had blossomed in Communist propaganda but had not materialized on the ground.

#### D. Response to Warnings

10. Nevertheless, Washington and Saigon were, as stated earlier, fully aware that the enemy planned a major offensive, probably coordinated attacks in northern I CTZ, at Dak To in the highlands of II CTZ, and toward Saigon from virtually all sides in III CTZ. As early as 10 January, General Westmoreland had canceled certain planned operations in northern III CTZ in order to reposition US forces nearer to Saigon. In subsequent days he issued a series of warnings to his commanders, and to the US Mission, that the enemy was preparing to attack. Although he had not originally expected attacks during Tet, he recognized the significance of the premature attacks in MR 5 and on 30 January notified all his commanders to expect attacks that night. As a result all US units were fully alerted, although in most cases they did not have time or information to take offensive measures against the enemy prior to the actual attack. All Seventh Air Force bases were put on a maximum state of alert, and the 7th AF Director of Intelligence testifies that this step "saved Tan Son Nhut." Perhaps the best evidence that COMUSMACV's measures were effective and that the enemy's strategic intelligence was faulty is that, with the exception of Hue, the enemy failed to hold any of his major military objectives for a significant period of time.

11. The urgency felt in Saigon was not, however, fully felt in Washington in the immediate pre-attack period. As a result, finished intelligence disseminated in Washington did not contain the atmosphere of crisis present in Saigon. We do not believe this represents a failure on anyone's part. The information available

was transmitted and duly analyzed, but atmosphere is not readily passed over a teletype circuit. Although senior officials in Washington received warnings in the period 25-30 January, they did not receive the full sense of immediacy and intensity which was present in Saigon. On the other hand, with Saigon alerted, virtually nothing further could be done in Washington that late in the game which could affect the outcome.

12. Within this general picture, there were significant differences among the four corps areas. III MAF expected assaults on Khe Sanh and Quang Tri. It had received from a local CIA operation the enemy attack plan for Da Nang, but not the date. General Cushman stated that he expected to be attacked during Tet, and enemy activities in northern I CTZ had prompted higher authority to cancel the Tet truce in I CTZ. As a result both US and Vietnamese forces were better prepared here than elsewhere. Most Vietnamese units were at nearly full strength. The extent and coordination of the enemy's attacks, considerably exceeded expectations, as did his tenaciously held lodgement in Hue. In general, however, his assaults were easily thrown back.

13. In II CTZ, allied forces in the coastal lowlands were for the most part attacked on the night of 29-30 January by MR 5 units. They did not have the advantage of forewarning which these attacks provided units farther south, nor were they in the "alert" posture of Allied forces in I Corps. The Allied forces were on a higher than normal state of alert, which was, however, directed against the inevitable cease-fire violations rather than attacks on the cities. In the highlands, singularly unlike any other area, intelligence was available from communications intelligence, prisoners, and documents reflecting specific plans for attacks during Tet. For instance, Communist plans for attacking Dak To, Pleiku, and Kontum were known well in advance, and the US 4th Division was able to correlate them with enemy deployments. This provided one of the few opportunities for US forces to take active measures against the enemy; Pleiku was the most successful US operation of the offensive. Elsewhere in the highlands intelligence was not as good, but there was enough information to lead two of the three ARVN division commanders in II CTZ to cancel all leaves on their

own initiative. We do not believe, however, that these orders were totally effective in recovering personnel who had already departed.

14. It has been noted above that US redeployments in III Corps began before mid-January. These movements were triggered by the concentration of three enemy divisions along the Cambodian border north and northwest of Saigon and by indications that these units were beginning to deploy southward toward the city. In addition, US and ARVN intelligence officers had earlier deduced from a reorganization of the enemy command structure in MR 4, which surrounds the Saigon area, that its purpose was to improve command and control for the coordination of an attack on that city. III Corps and II Field Force were put on a general alert on 30 January (General Westmoreland's actions resulting from the attacks in MR 5 the previous night), and during the course of the day began to receive more specific information that Saigon was to be attacked that night. In most ARVN units in III Corps the troops appear to have been in their normal Tet condition.

15. In IV CTZ, the nature and extent of the enemy's attacks were almost totally unexpected. Allied forces were aware that Viet Cong capabilities had improved. An NSA report of 25 January, which warned of the possibility of impending attacks in other areas, noted that units in the "Nam Bo area," which includes the Delta, might also be involved. The supply of modern weapons had increased and the VC had shown an ability to conduct a series of coordinated attacks throughout the Delta. To some degree however, this could be interpreted as reactions to a more aggressive allied posture in the area. In the Delta cities the presence of the VC during Tet was so traditional as to be accepted as routine. General Eckhardt, Senior Adviser, stated that the only warning he received was General Westmoreland's alerting message of 30 January. General Eckhardt was able to alert the US support and logistic units in the Delta, but was unable in the time available to restore the readiness of ARVN units. The ARVN Corps commander and his three division commanders were present at their headquarters when the offensive struck, but their units were far below strength.

## E. Responses to Specific Questions

16. The preceding paragraphs have been responsive to General Taylor's questions a, b, f, and g. Our preliminary findings on questions c, d, and e are as follows:

### c. (Provision of information by civilians)

Prior to the offensive there were very few cases of civilians volunteering information on the impending attacks. This is not necessarily, however, a measure of the degree of civilian cooperation with the regime. The enemy's security measures, his rapid deployments through territory much of which was under his control, and the basic difficulty of rapid communication from countryside to city would have prevented friendly villages from passing warnings in many cases. As noted above the presence of infiltrators in the cities was unremarkable during Tet. During the Tet fighting, and since, there has been a marked increase in information volunteered from the populace.

### d. (Exchange of information)

Given the size and complexity of the US and Vietnamese intelligence systems, we found cooperation and exchange in this case to be remarkably good. No case was reported to us of the deliberate withholding of significant warning information by one agency from another. With the mass of intelligence information acquired in Vietnam every day, there was inevitably some human error. Not all low-level reports got to everyone they should have. There is no evidence, however, that these minor shortcomings affected the general intelligence picture.

### e. (Identification of units)

Most of the units engaged in the offensive have been identified. In general, there was a close correlation between US order-of-battle holdings in a given area prior to the attacks and the units identified in the attacks, although not all units deployed in any given area were actually committed in most cases, and some new provisional units were identified in the attacks. As noted above, the enemy's facade of

a "general uprising" required him to attack with his Viet Cong units wherever possible. Especially in III and IV CTZs he held back many Main Force and most NVN units for follow-up. Because of the failure of the initial attacks, in all but a few instances a follow-up never came.



# APPENDIX V.—CORRESPONDENCE FROM JULY 1975 "HARPER'S" MAGAZINE RELATIVE TO ARTICLE ENTITLED—"VIETNAM COVER-UP: PLAYING WAR WITH NUMBERS," BY SAM ADAMS

[From "Harper's" magazine  
July 1975]

## LETTERS

[COMMITTEE NOTE.—Mr. Adams' testimony and his article in the May 1975 issue of "Harper's" magazine are printed in part 2 of these hearings.]

### The cult of misintelligence

Either Sam Adams's article ["Vietnam Cover-Up: Playing War With Numbers," May] was heavily edited or Sam's memory isn't so good these days. There was no cover-up in the CIA.

Most of the knowledgeable people in the CIA, including the director and myself, thought Sam's analysis of the strength of the VC had merit. The question was, How much merit? Most agreed that, where the evidence existed, Sam's figures could be supported. But where there was little or no evidence, considerable doubt existed as to how reliable Sam's extrapolations were. Sam thought his extrapolations to be sound. Other equally competent and knowledgeable analysts and their supervisors were not so sure.

As I remember the consensus, it was that VC strength was indeed a good deal greater than had been estimated but probably not as much greater as Sam thought. Even the CIA was inclined to agree, but Military Assistance Command headquarters remained skeptical. Sam wanted to take the matter directly to the President. Our director—quite correctly, I thought—didn't feel he could do that without stronger evidence and a consensus in support of it.

The director asked me to look into the matter. I did so and spent considerable time on the question, including a long interview with Sam which he neglects to mention, or perhaps he confused it with the one he says he had with our then executive director. Anyway, Sam made a long

memo of our conversation, and I agreed to its substance.

As a result of all this, I discussed the matter with the chairman of the President's Foreign Intelligence Advisory Board. He then arranged to have Patrick Coyne, executive secretary of that board, interview Sam Adams. This was done.

The net result was that we could perceive no merit in presenting Sam and his conclusions to the President, and that close scrutiny and revision of VC strength figures should be continued as evidence became available and along the lines he had pursued.

Sam was not satisfied with that decision and kept insisting that arrangements be made for him to present his case personally to at least the PFIAB and Rostow.

At that point Helms and the rest of us had had enough of what I considered intellectual arrogance on Sam's part, so I told him in writing to get back to work with the rest of the team or resign and pursue his campaign on his own time. At no time do I recall Sam Adams being suppressed, ignored, or restrained or his ideas pigeonholed, nor was any question of security restraint raised.

I think *Harper's* owes an apology to Messrs. Graham, Procter, and Hyland for the gratuitous and insulting comments it printed about them.

RUFUS L. TAYLOR  
Vice Admiral, U.S. Navy (Ret.)  
Whispering Pines, N.C.

*The writer was Deputy Director of Central Intelligence from 1966 to 1969.*

Sam Adams's article presents a distorted picture of the CIA's ana-

lytical effort on Vietnam. *Harper's* has become an accomplice in an unjustified attack on precisely those elements of the CIA—the Directorate of Intelligence and the Office of National Estimates—that worked consistently to put forth an honest and objective picture of Communist capabilities and determination to prolong the war against the imposing military might assembled by the U.S. government.

This work comprised a vast outpouring of studies on Communist logistics, Communist manpower resources in both South and North Vietnam, and the effects of U.S. air bombing (a subject which involved the Agency in long and sometimes bitter arguments with the U.S. Seventh Air Force). The product of this work went to the President and the principal members of the National Security Council (Secretaries of State and Defense).

By mid-1967, if not by mid-1966, the Agency had clearly passed the word that the Communists' manpower resources were adequate to sustain the war, that their logistics system was bearing up under bombardment, and that the Hanoi leadership was determined to protract the struggle.

Unfortunately, Adams fails to take any of this work into account and he conveys a misleading impression of a single-handed and lonely struggle to get the truth about the war to the White House against the massive opposition of countless knaves and cowards. His charge that his research findings were suppressed does not stand up against a careful reading of his article. And his assumption that these findings were generally accepted within the CIA is a distortion

## LETTERS

of the facts. His research subject, order-of-battle analysis, was arcane and complex. This was particularly the case when dealing with paramilitary or irregular forces that do not appear on the battlefield in regular units. Adams's methodology for estimating the strength of these irregular and paramilitary forces often raised more questions than it answered. He was dependent on captured Communist documents, which meant that there were valid questions as to the timeliness and accuracy of the data as well as to the statistical significance of the available sample. Beyond the question of the numbers of Communist irregulars was the larger question of their military capabilities and staying power. There was always room for debate on these points, but it is clear that there was no neglect of the subject.

One paper which dealt with all these issues at length was the 1967 National Intelligence Estimate on Vietnam, which Adams describes as a sellout to the "generals" on the order-of-battle figures. Apparently Adams was so obsessed with his own figures that he never read the entire paper. It included an extended discussion of order-of-battle methodology, with particular attention to the problems of estimating strengths of paramilitary forces. It also provided a lengthy discussion of the various categories of Communist irregulars and the nature of their contribution to the total Communist effort. The paper as a whole gave a fair and objective picture of Communist strengths and weaknesses. I stand by it and would welcome action by the CIA to release it to the public.

In my twenty-five years in the CIA I never saw an analyst given more individual attention, more opportunities to present his evidence and state his case. Yet the impression created by the *Harper's* article is that of a man whose work was suppressed and whose views were ignored. Many of us were sympathetic to Sam because of his diligence and persistence, but these traits were not uncommon among the many outstanding analysts at the CIA. Adams was only uncommon in his inability to see that he, like the rest of us, was occasionally fallible, and in his belief that all who disagreed with his findings had base and ulterior motives.

JAMES C. GRAHAM  
Potomac, Md.

*The writer is a former member of the Board of National Intelligence Estimates.*

## SAM ADAMS REPLIES:

Vice Adm. Rufus L. Taylor and Mr. James C. Graham suggest that in arguing with the military over Vietcong strength in 1967 and 1968 I somehow got carried away. Vice Admiral Taylor ascribes my zeal for higher numbers to "intellectual arrogance," Mr. Graham to an obsession. The dispute over numbers, they say, was a reasonable debate between reasonable men over different ways of counting enemy soldiers.

As they ought to know, however, the real concern at that time was that the military was deliberately lowering VC numbers in order to promote an "image of success." I did not make this phrase up. It appeared on August 21, 1967, in a secret cable composed by General Abrams, approved by General Westmoreland, and sent to General Wheeler—head of the Joint Chiefs of Staff—and finally to Mr. Helms, Director of the CIA.

The principal reason for dropping two categories from the order of battle, the cable said, was that the press would draw "an erroneous and gloomy" conclusion if the categories were left in and that "all those who have an incorrect view of the war will be reinforced and [our] task will become more difficult." I found this argument outrageous, and I would be surprised if both Vice Admiral Taylor and Mr. Graham did not feel the same way.

In my opinion, some of the actions taken to slash enemy strength figures may well have constituted a violation of the Uniform Code of Military Justice, particularly that article which forbids false official statements. For example, in February 1968, a lieutenant in Westmoreland's Order of Battle Section returned to his desk in Saigon to find that his superiors had cut one of the categories still remaining in the order of battle from some 80,000 to about 40,000. Incredulous—since the category was his analytical responsibility, and since he had seen no evidence to justify the drop—he went to the chief and deputy chief of the Order of Battle Section to demand an explanation. "Lie a little, Mac, lie a little," he was told. He refused to do so, and was transferred from

Westmoreland's headquarters to an outlying post. Fortunately, he survived the war to tell Senate investigators looking into intelligence matters recently of what transpired.

Two months later, in April 1968, the same head of the OB Section, a Lieutenant Colonel Weiler, appeared at CIA headquarters with Brig. Gen. Daniel O. Graham to argue for the lower numbers. The question arises whether General Graham—one of the persons to whom Admiral Taylor thinks *Harper's* should apologize—was aware of the alleged falsification. If he was, the question then becomes whether Daniel Graham, now head of the Defense Intelligence Agency, should keep his job.

Unfortunately, sufficient space has not been allotted to me to answer Mr. Graham and Admiral Taylor's criticisms point by point. I have, however, spent several days going over the points raised in the *Harper's* article with Senate investigators, and I have hopes that more will be heard on this subject through the committee's continuing work. My concern at this time is that the controversy not stray from the central question at issue here. The question is twofold: first, whether we now have in our intelligence establishment the competence to accurately evaluate potential and existing threats to our nation's security; second, whether we have the courage and the integrity to present this information, no matter how unpopular it might be, to the men in government who presumably rely on it to formulate a rational foreign policy.



# APPENDIX VI.—CORRESPONDENCE BETWEEN CONGRESSMAN DALE MILFORD AND W. C. WESTMORELAND, GENERAL, USA (RET.), RELATING TO COMMITTEE'S HEARING ON THE TET OFFENSIVE

DALE MILFORD  
SATA, TEXAS  
  
WASHINGTON OFFICE:  
430 CANNON HOUSE OFFICE BUILDING  
PHONE: (202) 225-3008

RICHARD H. WHITE  
ADMINISTRATIVE ASSISTANT  
ELIZABETH KERRY  
LEGISLATIVE ASSISTANT  
BETTY GIBSON  
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Congress of the United States  
House of Representatives  
Washington, D.C. 20515

COMMITTEE  
SCIENCE AND TECHNOLOGY

## SUBCOMMITTEES

CHAIRMAN, AVIATION AND TRANSPORTATION  
RESEARCH AND DEVELOPMENT  
DOMESTIC AND INTERNATIONAL SCIENTIFIC  
PLANNING AND ANALYSIS  
ENVIRONMENT AND ATMOSPHERE

PUBLIC WORKS AND  
TRANSPORTATION

## SUBCOMMITTEES

AVIATION  
INVESTIGATIONS AND REVIEW  
PUBLIC BUILDINGS AND GROUNDS

December 1, 1975

General W. C. Westmoreland, USA (Retired)  
Post Office Drawer 1059  
Charleston, South Carolina 29402

Dear General Westmoreland:

As you undoubtedly know, one of the topics examined by the House Select Committee on Intelligence has been the performance of the Intelligence Community prior to the TET Offensive in 1968. Public hearings on this subject were held on Thursday, September 18, 1975. The only witness heard by the Committee was Mr. Samuel A. Adams, a former employee of the Central Intelligence Agency.

In his testimony Mr. Adams brought very serious charges of corruption in the intelligence process. He asserted that the CIA and the Department of Defense conspired to produce false estimates of the strength of the enemy forces in South Vietnam. In elaborating upon these charges, Mr. Adams accused a number of prominent Americans, including you, with deliberately downgrading the strength of the enemy army in order to portray the Viet Cong as weaker than they actually were.

As a member of the House Select Committee, I must view Mr. Adams' charges with concern if, indeed, they are correct. I do not feel prepared, however, to make such a determination on the basis of the testimony of one witness. Due to a number of circumstances, none of the Government agencies or individuals accused by Mr. Adams has had the opportunity to present their side of the case. Given the magnitude of its task and the short time left in which to carry it out, it seems unlikely that the Committee will be able to hold additional hearings on the issues raised by Mr. Adams.

For these reasons, I believe it only fair that you be given some opportunity to present your views on Mr. Adams' testimony so that the Committee can have the benefit of your experience and your perceptions of the issues. I would appreciate it, therefore, if you would be kind enough to respond to the following questions so that they can be made

a matter of public record. You are free, of course, to prepare a formal statement for the Committee's consideration if you wish.

- Do you believe that there was a deliberate downgrading of the strength of the enemy army in order to 'portray the Viet Cong as weaker than they actually were?
- Would you comment on Mr. Adams' assertion that in July 1967 your command began to argue that certain categories of Viet Cong -- that had been in the estimate since 1962 -- should be dropped? Mr. Adams further asserts that you endorsed the views of General Abrams that higher Viet Cong strength estimates should not be made public and implies that the only reason for doing so was because the press would draw erroneous and gloomy conclusions.
- To what extent do you agree with Mr. Adams that the loss of thousands of American lives and hundreds of planes was due to an underestimate of enemy strength which in turn led to the failure of intelligence to predict the TET Offensive?
- Do you agree that US and South Vietnamese forces were completely unprepared for and caught by surprise by the TET Offensive?
- Mr. Adams has charged that there was a deliberate policy at the highest levels of Government to fool the public, the Congress and the American press. Do you have any comments about this charge?
- Were hundreds of aircraft lost during the TET Offensive because they were parked wing-tip to wing-tip?

2007

I am sure, General, that you will respond quickly to these questions so that the Committee and the American public will have the benefit of your views on these important questions.

Sincerely yours,

DALE MILFORD, M.C.

DM:pk<sup>r</sup>

2008



DEC 15 1975

P. O. Box 1059  
Charleston, South Carolina 29402

Honorable Dale Milford  
United States Congress  
Washington, D. C. 20510

Dear Congressman Milford:

This responds to your letter of 1 December 1975, wherein you requested my comments on certain allegations presented to the House Select Committee. I have noted in the press that Mr. William Colby and Lieutenant General Graham appeared before the Select Committee and I have obtained knowledge of their remarks. With this in mind, I shall present my own views on the questions you have posed.

I categorically deny, as others before me, that there was an effort by military intelligence to deliberately downgrade estimates of Vietcong (VC) strengths in order to portray the VC as weaker than they actually were. As a matter of fact, in November 1967, the Intelligence Community produced a revised estimate of the VC that reflected the views of the military intelligence staffs in Saigon and Hawaii, CIA, and the Pentagon. This new estimate, the result of a sweeping review of information gleaned during the 1965-67 period, reflected no great difference of opinion between the military and CIA. What it did do was exclude from the Order of Battle Vietcong elements (Self Defense Forces and Secret Self Defense Forces) that could not be considered a part of the Communist Military Threat (Infantry, Armor, Artillery, and Logistic Support Units), while recognizing that they were part of the VC organization and had to be treated as such. These excluded elements were not a part of the enemy army

per se. They possessed no offensive capability and did not pose an offensive threat to the Allied Forces. The problem was that Mr. Adams wanted to introduce these elements into the VC Military Threat to US and South Vietnamese forces and they simply did not belong there. Additionally, he inflated the size of these militarily impotent elements.

As for my endorsement of General Abrams' views in rejecting Mr. Adams' contentions, I can only say that both General Abrams and I were motivated by a desire to prevent false figures from being introduced into the VC Order of Battle. This is quite the opposite from defending false figures. In my endorsing message I said "It distorts the situation and makes no sense." These figures were rejected by the Intelligence Community, including the CIA, because his methodology was faulty; this after having had ample opportunity to prove his case. I further stated in my message "No possible explanation could prevent the erroneous conclusions that would result." I can state with certainty that adoption of these figures would have created false and misleading impressions by the news media. Our concern was to keep the record straight, not be a part to misleading the American public as to the true enemy situation.

As others before have done, I also want to lay the canard to rest that the TET offensive represented an intelligence failure. The large-scale attacks that occurred were not only anticipated, but I personally directed each commander to place his forces in a maximum alert posture, in anticipation of the attack I knew was coming, 36 hours in advance. I prevailed upon President Thieu to minimize the number of troops permitted to take leave during the TET holiday leave period in order to strengthen their readiness to meet an attack. The only surprise was in its rashness. The enemy assumed risks, inviting great casualties, due to attacks on heavily defended areas where superior firepower could be brought against them. The dispersal of his forces across the broad front incurred further risk against superior concentration of Allied Forces. For a more detailed account of the circumstances surrounding TET, I invite your attention to a publication entitled


"Report on the War in Vietnam" written by Commander-in-Chief, Pacific, and Commander US Military Assistance Command, Vietnam. The report was published in late 1969 and was issued by the Government Printing Office.

Naturally, I cannot agree with the allegations presented to the Committee by a former CIA employee on the loss of US lives and aircraft. The accepted figure on loss of US lives is about 2,200--not 10,000 as Mr. Adams alleged in a magazine article. About 58 aircraft were destroyed and 239 damaged, not 1,200 as Mr. Adams alleged before the Select Committee. I, and my field commanders, were extremely sensitive during the entire course of the war, and particularly in anticipation of the TET offensive, about the security of aircraft. Security measures varied slightly from area to area in accordance with the judgment of local commanders. In general, commanders positioned and protected their aircraft in such a way as to minimize losses from either shelling or individual sapper attacks. Therefore, aircraft were, as a normal practice, revetted or dispersed to the extent feasible in consideration of defensible dispersal areas. A small number of aircraft were habitually on alert with pilots in the cockpit (or seconds away) and these aircraft were handled in a special manner in order to reduce reaction time.

In summary Mr. Congressman, I have presented you the facts and circumstances based on my knowledge and experience as one with authority on the scene. Other knowledgeable people are available if the Committee wishes to pursue the matter. Specifically, my former Chief of Intelligence, then Brigadier General, now Lieutenant General Davison, USA(Ret), and the present Vice Chief of Staff, US Army, General Kerwin.

I am happy to cooperate with you in this instance, and with the Select Committee in any way, in search of the truth.

Respectfully,

  
W. C. WESTMORELAND  
General, USA(Ret)

# APPENDIX VII.-CORRESPONDENCE BETWEEN COMMITTEE STAFF AND CIA REGARDING INTERPRETATION OF SECTION 662 OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED (THE HUGHES-RYAN AMENDMENT)

OTIS G. FREE, H. V., CHAIRMAN  
 ROBERT M. BARNES, CONN.  
 JAMES V. STANTON, OHIO  
 RONALD V. WILLIAMS, CALIF.  
 THOMAS F. BURROUGHS, ILL.  
 LES ASPEN, WIS.  
 ALB. WILFORD, TEX.  
 HENRY H. HAYES, IND.  
 WILLIAM LEBLANC, FLA.

ROBERT MC CLORY, ILL.  
 DAVID C. TRENCH, LA.  
 JAMES P. JOHNSON, COLO.  
 ROBERT W. EASTON, JR., WIS.

A. SEARLE FIELD, STAFF DIRECTOR  
 AARON B. CONNER, COUNSEL  
 TELEPHONE: (202) 223-9751

Select Committee on Intelligence  
 U.S. House of Representatives  
 Washington, D.C. 20515

2 September 1975

William E. Colby, Director  
 Central Intelligence Agency  
 Washington, D.C. 20505

Dear Mr. Colby:

I am writing with respect to Section 32 of Public Law 93-559, the Foreign Assistance Act of 1974, which states:

Foreign Assistance Act of 1974  
 Pub. L. 93-559 §32

## INTELLIGENCE ACTIVITIES AND EXCHANGES OF MATERIALS

Sec. 32. The Foreign Assistance Act of 1961 is amended by adding at the end of part III the following new sections:

"Sec. 662. Limitation on Intelligence Activities.--(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution.

Please provide this Committee with a statement of the Central Intelligence Agency's position regarding each of the following questions:

1.(a) Does this section require that the CIA may begin "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence" only after the President has reported to Congress regarding each such operation?

William Colby  
2 September 1975  
page 2

(b) Does this section specifically require that the CIA may begin covert action operations only after the President has reported to Congress regarding each such operation?

2.(a) By what criteria are CIA activities which are covered by this section distinguished from those which are not?

(b) Are there any CIA covert action operations which are not covered by this section?

3. What is the meaning of the phrase "unless and until"?

4. What is the meaning of the phrase "in timely fashion"?

5. In what ways, if any, does this section amend, repeal, or otherwise affect Section 6(a) of the Central Intelligence Agency Act of 1949? Please be as specific as possible.

6. In what ways, if any, does this section amend, repeal, or otherwise affect Section 10(a) of the Central Intelligence Agency Act of 1949? Please be as specific as possible.

7. Has the CIA provided any information or made any recommendations to the President, the Director of Central Intelligence, or any other official or agency of the federal government regarding this section or any of its provisions or requirements? If so, please provide copies of any such information or recommendations and all other documents relating thereto.

8. Have any memoranda, reports, letters, communications, or other documents been prepared by or for the CIA regarding this section or any of its provisions or requirements? If so, please provide copies of all such items mentioned above.

9. On what occasions and concerning what operations have reports been made to the appropriate committees of the Congress, pursuant to this section? Please provide the following information: (1) a brief description of each operation on which such a report was made, (2) the date on which each such report was delivered to the appropriate committees of the Congress, (3) the persons to whom each such report was delivered, (4) the form (oral or written) in which each such report was made, and (5) the date on which each such operation began.



William Colby  
2 September 1975  
page 2

Thank you for your cooperation with this committee.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Searle Field".

A. Searle Field  
Staff Director

CENTRAL INTELLIGENCE AGENCY  
WASHINGTON, D.C. 20505

6 January 1976

Mr. A. Searle Field  
Staff Director  
Select Committee on Intelligence  
House of Representatives  
Washington, D. C. 20515

Dear Searle:

In your letter of September 2, you raised various questions concerning the requirements imposed on the Central Intelligence Agency by Section 32 of the Foreign Assistance Act of 1974 (which added Section 662 to the Foreign Assistance Act of 1961). Although you raised a number of different questions in your letter, they all concerned the following two subjects: (1) which activities conducted by the Agency are limited by Section 662; and (2) the circumstances under which Section 662 permits funds to be expended by or on the Agency's behalf for the conduct of such activities.\* Each of these subjects is discussed below.

1. SCOPE OF SECTION 662

Section 662 provides:

"SEC. 662. Limitation on Intelligence Activities.--

(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of

\*/ The specific questions raised in your letter are answered individually in Appendix A (attached).



The Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

"(b) The provisions of subsection (a) of this section shall not apply during military operations initiated by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."

By its own terms, Section 662 applies to the expenditure of funds, by or on behalf of the CIA, for "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence." Thus, in order for a CIA activity to come within the scope of Section 662, the following conditions must be satisfied: (1) the activity must be an "operation"; (2) it must take place in a "foreign country"; and (3) it must not be intended solely for obtaining necessary intelligence.

The legislative history regarding these conditions is sparse. For example, it does not provide any guidance as to the meaning of the term "operation." Nor does it specify which activities are to be treated as intended solely for obtaining necessary intelligence.

Nevertheless, it has been the Agency's position that Section 662 applies to "covert actions" in foreign countries including paramilitary activities and activities intended to influence events in such countries. These activities would not include the gathering of intelligence, related management and support activities, liaison activities with cooperating intelligence agencies, intelligence briefings, or dissemination of foreign intelligence information to United States officials abroad.

## II. CIRCUMSTANCES UNDER WHICH FUNDS MAY BE EXPENDED FOR FOREIGN COVERT ACTION OPERATIONS

Section 662 provides that no funds may be expended for a foreign covert action operation "unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation

to the appropriate committees of the Congress." The statute thus imposes the following two requirements: (1) that no funds may be expended for a foreign covert action operation unless and until the President makes a finding that the operation is important to the national security; and (2) that the description and scope of the operation is reported to Congress in a timely fashion.

Clearly, Section 662, by use of the words "unless and until," establishes a precondition for the expenditure of funds for a foreign covert operation; that is, the President must make a finding that the operation is important to the national security before funds may be expended. In your letter of September 2, you raised the question of whether the second requirement imposed by Section 662 -- that a timely report is made to Congress on the description and scope of the operation -- was also intended to be a prior condition for the expenditure of funds.

The language of Section 662 and the legislative history clearly demonstrate that the report to Congress was not intended to be a prior condition to the expenditure of funds for foreign covert action operations. As indicated, the statute requires only that the President make his report in a "timely fashion." This language is inconsistent with any intention that the report be made before any funds may be expended. The phrase "unless and until," which unquestionably applies to the Presidential finding that a particular foreign covert action operation is important to the national security -- and makes that finding a precondition for the expenditure of funds -- cannot, consistent with sound statutory construction, apply to the reporting requirement. If it did, the words "in a timely fashion," which refer to the reporting requirement, would be rendered totally meaningless.

Moreover, the legislative history reflects Congress' understanding that the required report may be presented after a foreign covert action operation has commenced and funds have begun to be expended. In a statement on the floor of the House, Representative Nedzi, Chairman of the Intelligence Subcommittee of the House Armed Services Committee, said the following about Section 662:

"We have in this bill a provision restraining certain operations of the CIA to those 'important to the national security' and in timely fashion they are obliged to bring to the notice of Congress any activities which the CIA may be engaged in which are important to the national security." (Emphasis added.) Cong. Rec., Dec. 11, 1974, p. 11627.

This statement clearly recognizes that the CIA may already be "engaged in" covert action operations when the report is made pursuant to Section 662.

It is also important to note, in connection with this consideration of the legislative history of Section 662, that the original Senate version of the bill made both the Presidential finding and the report to Congress preconditions for the expenditure of funds. The words "in a timely fashion" were not used in this version of the bill. On the other hand, the House version of the bill made only the Presidential finding a precondition for the expenditure of funds, and provided that the report to Congress be made simply "in a timely fashion." Significantly, the Senate version was rejected by the conference committee and the House version was accepted, and, ultimately, enacted.

There is, of course, good reason why Congress did not make the report by the President a prior condition for the expenditure of funds. The members recognized that such a prior condition would be impractical and that it could even have adverse consequences for the national security. In particular, they recognized that it is often necessary to commence covert action operations on short notice and that timing often makes the difference between success and failure of such operations. In enacting Section 662, Congress recognized that commencement of an operation frequently cannot await the return of committee members from a recess. In such circumstances, Congress concluded that it would be sufficient for the President to make a prior finding that the operation is important to the national security and to report later -- as long as it is in a timely fashion -- to the appropriate Congressional committees.

This is precisely the practice that has been followed for every foreign covert action operation undertaken since enactment of Section 662. No such operation has been undertaken without a prior finding by the President that it was important to the national security. The procedure has been to inform the appropriate committee chairmen on the day of the finding or as soon thereafter as possible that the President has made a finding that a particular operation is important to the national security and that the Director is available to brief the committees of the finding. This procedure comports with both the letter and spirit of reporting "in a timely fashion" under Section 662.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mitch Rogovin", with a long horizontal flourish extending to the right.

Mitchell Rogovin  
Special Counsel to the Director

Attachment: As stated

APPENDIX A

- 1 (a) No.
- 1 (b) No.
- 2 (a) See letter, pp. 2-3.
- 2 (b) See letter, p. 3.
3. See letter, p. 4.
4. See letter, pp. 4-6.
5. None.
6. None.
- 7 and 8. We believe that these questions may be broader in scope than you intend, particularly in light of events which have occurred since September 2. We understand that, in response to a subpoena directed to the National Security Council, Committee staff members have had access to the minutes of the 40 Committee dealing with all past and present covert action operations and have been permitted to take notes concerning these operations. Since your staff has already had access to this very sensitive information concerning ongoing covert action operations, it does not appear necessary for us to elaborate upon or duplicate this information.
9. With respect to the dates on which reports were delivered to the appropriate committees or the persons to whom the reports were made, I must defer to the committees concerned which control such information.  
  
All reports that are made are made by the Director of Central Intelligence. Section 662 requires the President to report, but there is nothing to prevent him from delegating his authority in that regard, as he has done, to the Director.

The reports have to provide "a description and scope" of each operation. According to the legislative history, the reports may be oral, and this has been accepted in practice.

I would like to add that the language in Section 662 which specifies the recipients or reports is: "appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives." The history of the legislation indicates that beyond the two committees expressly included, the other Committees (or subcommittees) were at the time of enactment intended to be "the present Armed Services Committees and the present Subcommittees handling the oversight of matters of intelligence and the CIA," the latter being Subcommittees of the respective Senate and House Appropriations Committees (Congressional Record of October 2, 1974, at S. 18063-64.)

There is no requirement under Section 662 that the President's written finding must be furnished to the appropriate committees of the Congress. Under Section 662 the reporting requirements deal not with the finding itself or the basis on which it has been made, but with a description of the operation which follows from the finding. In the process of the congressional debates, the original words of this reporting requirement, "detailed description of the nature and scope" of each operation, were deliberately changed to give discretion to the President and the Committees to determine "the quality or the detail or the minutia" of the report given even to the particular committees involved. (Congressional Record of October 2, 1974 at S. 18063-5; House Conference Report 93-1610 of December 17, 1974 on S.3394 at pp. 42-3.)

The Conference Report also notes that:

The committee of conference agreed that strict measures should be taken to insure maximum security of the information submitted to the Congress pursuant to this provision.



# APPENDIX VIII.—“FOREIGN POLICY, PUBLIC OPINION AND SECRECY,” BY NICHOLAS deB. KATZENBACH (FROM “FOREIGN AFFAIRS,” OCTOBER 1973)

[From *Foreign Affairs*, October 1973]

FOREIGN POLICY, PUBLIC OPINION AND SECRECY

(By Nicholas deB. Katzenbach)<sup>1</sup>

What foreign policy will arise from the ashes of Watergate—and how it can gain that public consensus without which no foreign policy can hope to succeed—are questions we need to address now. Drift, debate, division are the inevitable aftermath of recent events; and it will take time and leadership—both in short supply—to discover, to create and to build upon a viable consensus.

The problem, of course, is not simply Watergate—though the destruction of presidential leadership and credibility and the confrontation of Executive and Congress which have accompanied that disaster would be problems enough. What adds infinitely to those difficulties is the clear connection between the sordid revelations of Watergate and the conduct of the Indochina War (at home and abroad), which in turn is related to the sometime excesses of a foreign policy too oriented to cold-war concepts of “national security.” The relationship is neither accidental nor coincidental, and it is important to the future of our foreign policy to understand why this is so.

I have come to this conclusion with considerable reluctance for two reasons: First, I would feel personally more comfortable if all that is associated with Watergate could be blamed on President Nixon—if the lawless and totalitarian overtones of his administration could be seen as purely aberrational, without roots in the past. To a large degree I think they are, but unhappily they are not so rootless as I would wish.

Second, I can give no support either to Henry Kissinger, who understandably would like to segregate Watergate from the real need to consolidate and perhaps even institutionalize the Nixon administration’s productive advances in moderating our relations with the Soviet Union and China; or, at the opposite extreme, to the revisionists who rewrite the history of post-World War II foreign policy in ways which adjust the past to their present and future preferences. We have to go through a difficult period if we are to build, as we must, on a solid basis of popular support for our foreign policy, and the essentials of that task are candor and honesty.

The thesis of this article is simple. Our foreign policy must be based on policy and factual premises which are accepted by the overwhelming majority of the American people. This means that this President or his successor must reestablish the credibility of that office; that there must be broad support in the Congress and in the press and public for the policy he seeks to forward, and virtually total confidence that there is no manipulation of facts to prove the wisdom of that policy or, which may often be the same thing, the honest commitment of his administration to it. Today—when confidence in the honesty and integrity of both the President and the Presidency is at rock bottom—that is a big order. We may have to modify or abandon foreign policy objectives supported by many to arrive at a satisfactory level of public confidence. But until an Administration can achieve it, we cannot hope to succeed in any foreign policy, however modest it may be by comparison with either the recent past or the somewhat lesser role which the United States might legitimately be expected to play in the future.

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## II

In foreign policy there is no substitute for presidential leadership in formulating and administering our foreign affairs. To say this is not to denigrate the role of either Congress or the public. The President needs support in both quarters, and if, despite his considerable power, he cannot achieve it, then he must trim his objectives to those which will be supported. In the past this basic fact of democracy has undoubtedly restrained and inhibited Presidents from acting in circumstances where later judgment would have supported the wisdom of doing so; the experience of President Roosevelt between the 1937 quarantine speech and the 1940 election was a classic and bitter example to men and women then forming their views. Indeed, this unhappy restraint may well have been a factor in the subsequent assertion of presidential prerogatives, with the result that no President since Truman has felt similarly restrained.

At any rate, the pendulum has now swung back. In recent history—especially in regard to Vietnam and related events in Southeast Asia—the effect of broadly held public views on our foreign policy has been very great indeed. This is hardly surprising. Concern for our national safety and independence are bound to be strong in times of crisis. The influence on the public of a sense of extremely large and unnecessary costs in human lives, or dollars, or risks of even more massive future involvement, is almost as great. One should hardly expect these powerful sources of public motivation, channeled at any given time into particularly widely held attitudes about the outside world and our relations with it, to be anything less than a major determinant of foreign policy in a democratic society.

There is nothing subversive about all this—although it may appear so to a President thoroughly committed to the importance and rightness of a particular course of action. Vocal and widespread dissent may easily frustrate his policy; damage our national security as he perceives it; severely limit his capacity to lead; and encourage the view that such opposition is truly subversive, the work of our enemies, and something to fear and even seek to repress.

Yet in fact the expression of dissent, however vocally vehement, is fundamental to the functioning of our democracy. Those responsible for the creation and execution of our foreign policy must be responsive to public attitudes and cannot seek to repress dissent and disagreement, conceal the truth from the public, or violate the letter and spirit of the Constitution. There is no "country" whose interests they serve apart from the people of the United States. There are no "interests" of that country apart from the interests of its citizens. However difficult and complex our foreign policy may be, there is no license to free it from the mandates of the Constitution or the constraints of public views, interests and wants, any more than any other difficult and complex problem can be freed from the same constraints.

All of this ought to be self-evident. That it is not—or, at least, that Presidents, and especially the present Administration, do not appear to accept it in fact—is the product of history, of the problems of a relatively open foreign policy, and finally of the rationalizations for secrecy, deception and unrestrained presidential leadership which have resulted from our conduct and national attitudes during the cold war.

First, throughout most of our history the American people have had little concern with foreign policy: there has been no continuing, everyday, costly involvement in relations with other nations. Apart from two world wars, foreign policy had little effect on our daily lives. With the notable and important exception of its negative role between those wars, Congress had little involvement and little interest.

Continuing and widespread public concern over our relations with other countries is really a phenomenon of the last 25 years. Measured in terms of even our relatively short history as a nation, we have not had much time to gain experience or adjust our political institutions to this new state of affairs.

Second, we were thrust into world affairs after World War II in an atmosphere of continuing crisis and virtually total responsibility for the future and well-being of the non-Communist world. We perceived the Soviet Union and its satellites as a major threat to our values, our national security and the continuing existence of a "free world"—and hence to our own national survival. In general, with disagreement only in degree, this view has prevailed until very recently. It may have been painting international affairs with too broad a brush,

but I do not think it was essentially wrong, and I believe that the foreign policy which evolved from this thesis was by and large successful until 1965, even in cases where its stated premises were questionable.

As a touchstone of domestic politics, this policy had its vices as well as one great virtue—the capacity to unify Americans behind an expensive, tough, far-flung foreign policy. The Truman Doctrine, the Marshall Plan, the rehabilitation of West Germany and Japan, NATO, the Common Market, military assistance, Point Four and economic assistance to developing nations, even our Latin American programs—many of them policies of high humanitarian content and internal motivation—all were justified, to Congress especially, in terms of national security related to the threat of world communism backed and encouraged by the Soviet Union.

The vices of this policy—of what became a bloated concept of national security—have been that it has tended not only to overextend our national commitments but to inhibit public debate and understanding of the complex world in which foreign policy is made and executed. It has, of necessity, given a major voice in foreign affairs to our large military establishment, and for much of the past 25 years there has been a tendency to equate dissent or criticism with disloyalty, with subversion, with being a Communist “dupe.” Obviously this repression of dissent reached its peak after the “loss” of China and during the era of the late Senator Joseph McCarthy. But appearing to follow the Communist line has been a political risk for critics during most of this period. And, again because of its “national security” premise, the policy has bred a host of questionable practices relating to security clearances, systems of classification of information, lists of subversive organizations, and snooping by security agents into the background, beliefs and associations of many citizens. It is not too long a step from security practices of the past to the ridiculous beliefs of the Watergate “plumbers” and their creators, and to the acts they sought to justify in the name of national security. Indeed—and I think this is a major part of the problem—very little of the protest activity associated with Vietnam would have been tolerated in the 1950s, and repressive measures might well have been accepted by the general public not so long ago.

### III

But I think the most dangerous part of our foreign policy of containment of communism has been the extent to which it has made our Presidents prisoners of popular political passion. Any foreign policy—and certainly one as global as that of the United States—involves inevitable trade-offs among the various costs we must pay for our security and well-being. Some mix of dollar costs, lives, nuclear risks, and risks because of changing allegiances of governments and populations is the daily gruel of those who seek to decide. Dollar costs can be reduced by a policy of massive retaliation, accenting increased nuclear risks. Both costs and nuclear risks can be reduced if we are willing to tolerate the loss of various allies or of influence in countries of marginal importance to us. But costs there will be, and trade-offs will continue to be the grist of our foreign policy. Yet the public has never been made aware of this central fact—and only after the price of Vietnam became so totally unacceptable have many become aware of the costs implicit in our foreign policy as it has stretched down the years and over space from its origin in the time of the Truman Doctrine.

Thus, since China and the McCarthy aftermath, no President has been politically willing to question the basic objective of no loss of territory to Communist regimes—to admit that such an objective cannot be absolute and that it may involve excessive risks of nuclear war or unacceptable costs of limited war (as it did in the end in Vietnam and might well have done in Korea as well). Accepting that objective as all-controlling, we have promoted it by our economic and military aid programs, by our systems of alliances, and to a limited degree by covert activities. We have seen dominoes not only in Southeast Asia and in Greece and Turkey, but also in Africa and Latin America. We have hoped that we could deter and prevent loss of territory by shoring up friendly regimes, giving them the military means to prevent subversion and the economic means to claim progress and prosperity. We have not been able to be selective in the process—as we should and could have been. Our selectivity has been dictated more by crisis than by purpose or policy: wherever the danger of Communist take-over existed, there went the dollars and the arms.

Again I do not suggest that, in the reality, this fire-fighting principle was either all good or all bad. I do suggest that it was motivated as much by the fear of the domestic political consequences of any "loss of territory" to communism as it was by serious security calculations. Legitimate concerns about Soviet expansionism and subversion were converted, after China and the Korean War, into domestic political fears of the consequences of a Communist take-over in Cuba, the Dominican Republic, Guatemala, Chile, the Congo, Tanzania, Iran, Vietnam, Laos—the list goes on and on. Since the Communist techniques of subversion, assistance to revolutionary groups, propaganda and exploitation of legitimate complaints have been extremely difficult to thwart or deflect by traditional diplomacy, we have often been forced, for better or worse, to give overt economic and military aid to repressive regimes. Worse yet, we have had to resort to covert means to blunt revolutionary movements aided and abetted by covert Soviet (and Chinese) funds and assistance. We have been forced to deny publicly—almost by definition—the covert assistance, and to defend the overt aid in terms of some threat to our national security—or worse, the democratic aspirations of dictators. Since the threat was often less than obvious—probably based on the assumption (not entirely unrealistic during the early part of the cold war) that Communist governments were totally subservient to Moscow—we reinforced by our words and actions the concept that any "loss of territory" anywhere was a potential threat to the United States. Everything we did tended to confirm the common perception that any adverse result was a disaster for the United States—thus making it a serious potential political disaster to the Administration that let it happen.

My purpose here is not to seek to disentangle the real from the imagined. My point is that no effort to do so was politically possible. Every President felt threatened by any Communist success anywhere, and took steps—some, at least, excessive in retrospect—to insure that the blame was not his. He operated in a climate of opinion where to be "soft on communism"—to lose anywhere, any time—was a serious blow to his status at home. And Presidents acted accordingly.

I have said that Presidents became the prisoners of the cold-war view of politics, even though each also contributed to it. The general public and congressional perception of the cold war—and, incidentally, of an exaggerated American power to influence and control events—made it virtually impossible for any President to be candid about the costs and risks of our foreign policy. The "China syndrome"—the aftermath of Joe McCarthy—meant politically that it was easier to accept the premise of "no loss of territory" in the hope that his Presidency would not be called to account than to attempt to gain public and congressional acceptance that the premise might involve unacceptable risks and costs. There was no hope—perhaps no time without crisis—for a public debate in the 1960s about the premises of the 1950s. Could President Johnson have permitted a Communist take-over in the Dominican Republic or in Vietnam, stating that he did not regard "friendly regimes" as important enough to our foreign policy to warrant military intervention? Was the American public prepared for such a statement? And was it, on the other hand, prepared for the costs which Vietnam demanded?

#### IV

In a sense, all of this political exposition is prelude to the major point of secrecy. But it is, I believe, tremendously important to the understanding of why we are where we are.

In our political system the President enjoys—or suffers—enormous advantages of leadership. His is an extremely difficult role to share, and to a considerable extent the advantages interact with the problems, one upon the other, to cripple the political system. His principal advantage is that the general public—even the best-informed public—views the world beyond our borders as confusing and dangerous. In the mass of information that flows to us each day, it is harder and harder to tell the players and the teams without a program.

To the extent that the average citizen is confused, he tends to place his trust in the President and in the experts. The feeling of danger—reduced and diffuse today but still very much present—brings with it a strong sense of the necessity for teamwork under a united leadership. And so the President operates from a protected position behind the high wall of the public's desire to delegate trust to one man—a wall built, on the one hand of feelings of danger and confusion,

and, on the other, of the fact that the President, as our nationally elected leader and our "sole voice" in foreign affairs, is the natural recipient of that trust. An opponent who would attack the President's leadership must first convince the public to endure the feelings of danger and uncertainty that come when trust and confidence are taken from the President. And that is a risky political endeavor.

Unfortunately, Presidents are inclined to think this blind trust in their wisdom is wholly justified. Having almost sole access to the full range of classified information and expert opinion, Presidents are tempted to think that the opinions of Congressmen, academics, journalists and the public at large are, almost unavoidably, inadequately informed. It is too easy to conclude that the opinions of others lack essential knowledge and that unequal information and unequal background make their views less important. The subtle insights of specialists or classified pieces of information are often accorded a totally undeserved attention and importance in comparison to more widely shared insights and knowledge.

All this reduces the politically healthy feeling of being constrained by the disagreement of many of one's peers. But that might not be particularly serious if the President and the executive branch were bias-free and single-minded in their desire to produce results representing the long-run preferences of the American public. Unfortunately, neither of these conditions is likely to prove true.

For there are biases built into the position of the President—and the advice he receives—that are likely to lead to departures from the needs of the country as perceived by others. For one thing, the very factors which reduce the value of the opinion of others on tactical questions have a way of spreading to questions of basic values. There is a tendency to assume that such fundamentals as the amount of dollar cost the public will bear to reduce nuclear risks, or the loss of lives that we will bear to avoid a particularly offensive weapon, are technical decisions for experts—although these decisions plainly involve only value judgments, not specialized knowledge, once the choices are fairly laid out.

The problem is further complicated by the fact that Presidents in recent years have become increasingly enamored of their role on the stage of world affairs and are likely to resist a more limited role even if the public were to assign it to them. Presidents want to secure an honored place in history and feel that the scope of American power, prestige and influence is a crucial aspect of a historian's memory of their terms of office. This can be a heady business. It is compounded by the relative freedom that the President has in foreign affairs—freedom from annoying congressional restraints and freedom based on the generalized need of the public for unitary leadership in times of danger. It would be going too far to say that a President welcomes a Cuban missile crisis or a Six-Day War in the Middle East. But it would not be going too far to say that the Presidency thrives upon it, as the Nixon Presidency has thrived on his televised visits to China and Russia.

All of these pressures make a relatively retiring presidential role less likely whatever the public interest. When they lead a President to costly or risky policies with which much of the public cannot identify its interests, or which seem to exceed the discretion required by the danger, these biases can cause the President to lose that basis of popular support on which he necessarily relies.

Over the years, then, we have moved farther and farther away from the basic premises of our democratic political system to put important decisions on foreign policy in the hands of the President and, in effect, to charge him with its successful administration. Our almost total reliance on the President's leadership and accountability; the felt need to fight insurgency with counterinsurgency, often secretly; our unwillingness to test foreign policy initiatives in the ways in which we test domestic policy proposals—through debate and discussion; the appeal of "national security" as sufficient justification for a vague and extensive foreign policy; and, most of all, the fear of the President that his political popularity, his place in history and his capacity to lead all depend on not having another China, or Cuba, or other major loss to communism—all these considerations tempt a President to go it alone in the hope that the policy will succeed. The temptation to let the end justify the means is clearly present, even if the means requires dissembling or misleading the Congress and the American people. Such conduct can, in the environment of the recent past,

be rationalized as necessary to maintain that secrecy on which success depends. And, after all, it is unlikely that the President's honesty and good faith will be brought effectively into question if the policy is successful.

The Bay of Pigs debacle of 1961 is an illustrative example. The idea that, in an open society, one can expect to launch a covert attack on a neighboring country in total secrecy seems patently absurd. For that adventure there are only two explanations: Presidents Eisenhower and Kennedy must have assumed, first, that the public would not require a political accounting of the authority of the President to act in secret without formal Congressional authorization or knowledge; second, that total failure of the operation was improbable, and that the secrecy essential to its success could be maintained for a sufficient length of time. And I suspect that President Kennedy, despite his obvious reservations about the whole plan, was extremely reluctant as the incoming President to cancel a project initiated by his prestigious predecessor in view of the domestic political risk which that would involve.

The significant aspect of this incident is the fact that President Kennedy's *mea culpa* related to the failure of the mission, and the later investigation into how the President could be so misinformed. He felt no need to apologize for undertaking so extensive a covert activity on presidential authority alone.

Was the Bay of Pigs different in kind or quality from the secret bombing of Cambodia (and falsification of records) at President Nixon's direction? True, in the first case there was complete candor after the event, but in both cases the element of total secrecy was overriding at the time of action, because it appeared necessary to achieve what the President (and many others) regarded as legitimate foreign policy objectives. But, however justified by such necessity, secrecy destroys our democratic process when it also deceives the American public on important and controversial matters.

There have, of course, been other covert operations, though perhaps none so extensive as these. Operations in Laos and Thailand were more or less open secrets, better known to Congress and the press than some recent outbursts would suggest. But nonetheless all such operations raise the question of how far the President can go it alone, and especially when the operations themselves have no formal congressional sanction and are unknown to—and undiscussable by—the general public.

The war in Vietnam has raised still deeper questions. Between 1961 and 1964 our operations in Vietnam through "military advisers" were, at most, partially covert. The fact of their number was known, and their roles only modestly concealed. As the operation grew and the possibility of more massive intervention became clearer—and, I am convinced, well before he had made up his own mind how far he would intervene—President Johnson did go to the Congress for authority in the form of the Tonkin Gulf Resolution. The form, at least, was observed, though unhappily in part as a political response to Senator Goldwater's position in the 1964 campaign.

Yet I cannot, in retrospect, square the Vietnam War with my concept of democratic government. What President Johnson did not do, when he had made up his mind in 1965, was to lay out fairly and frankly for Congress and the American people the choices facing us, the risks we were taking, and the possible consequences of our intervention. His failure to do so led in the end directly to attacks upon his credibility and to a serious erosion of the trust and confidence of the public in the President.

And, of course, as the war unfolded, lack of candor was compounded by miscalculations that I am sure far outweighed conscious deceit. At critical points, the dominant personalities within the Administration reflected to the President a degree of optimism which turned out to be totally unwarranted, and it was that optimism which the President in turn conveyed to the Congress and the public and which so destroyed his credibility. The voices of caution and doubt were not believed by the President, and were not, therefore, reflected in public statements. Added to what turned out to be miscalculation based on wishful thinking was the concern the President felt about unleashing the more militant forces epitomized in the 1964 presidential campaign by Goldwater and General LeMay. Mr. Johnson did not want the war, felt he could not let Vietnam go without overt military assistance, and was genuinely concerned about its potential for expansion. Once committed, he saw no retreat without too great a loss of prestige both at home and abroad.

In 1965 I have no doubt the public and the Congress would have overwhelmingly accepted and supported our intervention in Vietnam, and that any alter-

native (harsher or softer) course, as I am sure President Johnson knew, would have badly divided the country. There was in 1965 no basic contrary view; virtually no one of any political weight was avowedly prepared to accept the collapse of the non-Communist government in South Vietnam. In these circumstances it would have been difficult for Mr. Johnson to have volunteered all the risks potentially involved, to have prepared the American people for the worst. His primary political interest was the Great Society—not Vietnam—and his political compromise was to downplay Vietnam in the hope that guns and butter were both possible. In retrospect he should have encouraged a Great Debate; had he known his worst fears would be realized, he undoubtedly would have. Yet the harsh fact is he did not, and that he did not importantly narrowed his future options.

Then, as the war dragged on, and as opposition to it became increasingly vocal, the Administration's motivation subtly changed. It saw the opposition as making an already difficult task more difficult; as stiffening the resolve of the enemy; as making the search for an honorable peace infinitely more complicated. Information withheld, promulgated half-truths, propagandizing the good news—all of which were to a degree misleading—were now justified by the necessity to minimize the degree of opposition so that peace could be more rapidly achieved. And so the credibility gap widened farther, and trust and confidence eroded faster. Ironically, the fact that the statements of the government were less and less believed probably gave the domestic opposition a strength it never could otherwise have achieved.

Mr. Nixon—prior to Watergate—recouped some credibility for the Presidency. He did not, however, do so by frankness and candor. His technique was to reduce the levels of U.S. troops and casualties; to seek to focus attention on other matters by his China initiative; and to continue to dissemble and to restrain discussion on Vietnam. His excessive views of presidential power, his seeming disdain for congressional views, and his moving the center of decisions and operations from the State Department to the White House all have tended to reduce public discussion and, consequently, public opposition. And to a completely unprecedented degree he has conducted his foreign policy secretly. He regained considerable trust and confidence in the Presidency, not because his statements were believed, but because many of those naturally in political opposition grudgingly admired the initiatives toward China and Russia and respected the brilliance and competence of Mr. Kissinger.

Unhappily, secrecy in foreign affairs—and particularly in the atmosphere we have lived in for the past 25 years—is easily rationalized. Yet the reasons seldom have much to do with the rationalizations. In recent years, at least, the real motive has been precisely to avoid the difficulties inherent in our political system and hopefully to present the public with triumphant *faits accomplis*. What initially stemmed largely from confrontation between a growing vocal minority in Congress and the President, as well as increasing public demonstrations, was converted into constitutional principle by Mr. Nixon. In his Administration, neither the Congress nor the public has been informed about foreign affairs except at a level of high generality, and even then without the opportunity for discussion. Indeed, not even the bureaucracy has been consulted or informed. And this in turn has led to a failure to consult with, and inform, our allies abroad, culminating in the insult to the Japanese with respect to the change in our China policy.

Thus, even without Watergate, personal diplomacy conducted in secret, without public understanding or solid institutional foundation within the government, should now be insufficient basis for a viable foreign policy. And, if, as I believe, Watergate has destroyed confidence in the President's credibility, much more is now needed.

## V

What must be done today to put our foreign policy on a viable basis is, first, to promote discussion sufficient to establish the domestic consensus necessary to gain acceptance for, and support of, our foreign initiatives. We stand as a badly divided nation and we face some very tough problems. Second, we must restore confidence in the integrity of the Presidency. The Congress and the people need to believe what the Administration says. Both of these objectives mean dramatic changes in the style of the Presidency in foreign affairs.

I would propose the following changes:

(1) The President must indicate that he needs and wants the support and participation of Congress and the public in formulating his foreign policy. He must

welcome public discussion and criticism of his proposals. Clearly, he must do the proposing, he must provide the leadership. But he and his principal assistants must be far more willing than in the recent past to lay out candidly the problems, the choices, the recommended actions.

To involve the Congress in this fashion is, despite congressional protestations to the contrary, as much a problem for the Congress as for the President. The unpleasant fact is that most members of Congress find little political profit with their constituents in foreign affairs and in accepting the compromises necessarily involved. The role of critic after the fact is often more politically rewarding than that of a constructive participant. It is easy for opposition—especially in the Congress—to center around short-term considerations rather than long-term policies, to make appeals to national pride, to criticize almost any negotiation on the grounds that the Administration gave away too much in the mutual bargaining. The record of Congress on many foreign policy issues, usually in the form of amendments to foreign aid bills, is far from a distinguished one; and the temptation of the Executive to interpret away crippling amendments to its foreign policy has served to create still another tear in the fabric of constitutional government.

Secrecy in foreign affairs is not, therefore, a one-way street born of presidential ambition for power. Too often it suits congressional politics quite well—particularly in the House of Representatives, with its biennial elections. The temptation in both parties is to let the President assume responsibility, and to let future events determine the length of his coattails.

Nor is a compromise approach—secret consultations with relevant congressional committees and leaderships—much of an answer. If the issue is sufficiently controversial, there will be “leaks” to the press. If it is not—and especially if the matter is likely to become public knowledge in the near future—I do not think secret consultation serves much purpose. As for special “watchdog committees,” they have generally done more “dogging” than “watching.” Members of Congress feel totally dependent on the information secretly provided by the Administration; they are inhibited by national security considerations in taking their case to the public; they fear the political risk of frustrating executive action on matters they do not thoroughly understand and about which they have no independent information.

I do not wish to put aside totally the wisdom of such consultations and special committees; I only wish to note that they should be used rarely and resisted on both sides as an adequate substitute for a more open process of congressional oversight and decisionmaking. If the policy in question fails, the fact of this kind of congressional consultation may create as many problems as it solves. Rarely will the members of Congress feel a truly shared responsibility. And the effort to put them in this position may easily result in recriminations about the nature and quality of the information provided.

No, today there can be no substitute for a general rule of openness with the Congress. Congress must become truly involved in decisions and programs for action, and it must be told what the problems are, what the apparent options for action are, and why the Executive has come forward with particular proposals. If, in the process, nations abroad come to know somewhat more about the way an Administration's mind is working, I think the price—if it is that—eminently worth paying.

(2) It follows that the principal makers of foreign policy decisions must be exposed to Congress, the press and the public. If presidential assistants participate in the framing and execution of foreign policy to anything like the degree that Mr. Kissinger has done, they must be exposed to public view and scrutiny, and fully available to the Congress without subterfuge or the use of devious methods.

(3) We should abandon publicly all covert operations designed to influence political results in foreign countries. Specifically, there should be no secret subsidies of police or counter-insurgency forces, no efforts to influence elections, no secret monetary subsidies of groups sympathetic to the United States, whether governmental, nongovernmental or revolutionary. We should confine our covert activities overseas to the gathering of intelligence information.

I come to this conclusion with some reluctance, because in a few instances such activities have been legitimate and useful. But I believe the impossibility of controlling secret activities—and the public's apprehension about them—outweigh the losses which will be sustained. Much of this activity was phased out under Kennedy and Johnson, and I think the rest can go.



(4) We must minimize the role of secret information in foreign policy.

Many Presidents have sought to tinker with the present classification and declassification system, conscious that the tendency to reclassify and to spawn classified files has been out of control for years. If public proof of that fact were necessary, the Pentagon Papers and the ensuing trial provided it. All the documents involved carried high security classification, yet there was little evidence that any related importantly any longer to "national defense"—the test required by the major provision of law under which the trial was held. On the contrary, there was at the trial much expert testimony that none did relate importantly to the "national defense," and a determined and persuasive defense argument that little of the factual information provided in the mass of documents was in fact new. What made the release newsworthy was less its content than its voyeuristic appeal—the relatively rare public exposure of governmental processes to the public eye.

Prior efforts to revise the system have not worked, primarily because in no instance has major surgery been tried. Classifiers have mixed the desire to keep information confidential and "closely held" for whatever reason, good or bad, with information actually affecting the "national defense." To do this is a perversion of the law. Perhaps worse, it is a perversion of the processes of government, because it does not force officials to consider honestly the reasons for confidentiality or the relevant time frame. And the fact of gross overclassification tends, in turn, to destroy the system itself.

Prior to the Watergate exposures, the Nixon administration had presented to the Congress proposals to codify the classification system and to make disclosure of classified information a criminal offense in itself, with the validity of the classification not open to challenge in court. I assume that, in the present climate, any such legislation is dead—and rightly so. While the law under which Mr. Ellsberg was tried is crude, its essential criteria—that the information relate to the national defense and that its disclosure be with intent to damage the national interest—seem to me those that should prevail in this country for purposes for criminal sanctions.

At any rate, this is and will remain the law—and I believe that the classification system within the executive branch should now conform to it. Essentially, the extremely strict internal procedures of a full-scale classification system, and the threat of criminal sanctions for its deliberate breach, should now be coextensive with the law—while still emphatically leaving to the courts in any prosecution the testing of the validity of the executive classification as well as the question of intent.

What exactly would be covered by such a restricted classification system, limited to matters affecting the national defense? Examples would be CIA and DIA intelligence material on foreign military capabilities, troop dispositions, missile placements, and weapons development; and defense and AEC information on our own weapons systems, future technological developments, current strength and disposition, mobilization \* \* \* mates, and military plans to the extent such information is not already in the public domain. Even such a drastic cutback as this will result in some overclassification. But it should be more workable than the present morass.

I do not propose that all other information be made public or even generally available. I simply suggest that it not be classified as "national defense" information, carrying such exotic labels as "Top Secret" or "Cosmic Top Secret" or the like. I have no problem with limiting distribution within the bureaucracy of information which is politically "sensitive," or with general rules concerning the confidentiality of discussions with foreign diplomats, ambassadorial or other bureaucratic recommendations as to policy or personal or investigative records. (In the case of diplomatic exchanges, such common-sense rules long antedate the postwar expansion of classification.) Frankly, I think we can rely on the good sense of bureaucrats to keep confidential what should be confidential most of the time, without employing bloated concepts of national security to do so. I know this worked in the past within the Department of Justice and I see no reason why it should not work elsewhere.

(5) Classification will not stop leaks anyhow. What minimizes these is loyalty to superiors based not so much on agreement with policy as on respect for their fairness, integrity and openness to recommendations and ideas. A part of the new style of operation must be far greater openness within the executive branch itself. All Presidents fear becoming the prisoners of the government bureauc-

racy, and all Presidents have a healthy distrust of bureaucratic expertise. It is good that they should seek advice elsewhere and that departmental recommendations should be tested in various ways, including the competition of agencies and the interplay between full-time professional officers and those who enter government under political auspices. But to attempt to bypass the bureaucracy has heavy costs not only in the very "leaks" to which I have just referred, but above all in the failure to understand policy, to administer it effectively, to explain it to other constituencies at the appropriate time, and often to make decisions with full awareness of their consequences abroad.

## VI

In the present world situation, far greater congressional and public involvement in formulating our foreign policy seems to me not only right but nearly inevitable. There are two reasons for this:

First, problems of trade, investment, resources, development and international monetary stability promise to take on increasing importance in the future. All of these problems will require legislative solutions and therefore extensive congressional participation and action. All will involve a continuity in policy over relatively long periods of time and thus need public understanding and support.

Second, as communism has become less monolithic, as China has emerged as a competing ideological center, as the Soviet Union has become less stridently revolutionary and more concerned with China and with its own domestic progress, and as Europe and Japan have become centers for wealth and power, security considerations in the United States' foreign policy have become less consuming and less global. Mr. Nixon's approaches to both the Soviet Union and China, as well as the modest progress made in the SALT talks, are evidence of a changing security environment. Problems will remain but they will lack the felt intensity of the past 25 years.

Notwithstanding these changes in the world scene, the shift to a more open style in foreign policy will not be without its difficulties. One is the extent to which openness may in fact reduce options or be perceived as doing so. I accept the fact that it sometimes does. But I also think the extent of that reduction is exaggerated, often for improper purposes. I accept, too, that there are circumstances where the President or the Secretary cannot be totally candid without affecting the situation he is discussing. I think the press and public understand this. They know, for example, that high government officials cannot publicly discuss corruption or high South Vietnamese officials, or that high-level expressions of doubt about the viability of a foreign government may bring it down. But these inhibitions are not serious ones, because the underlying facts—if they are important to understanding policy—can be made available to the public in other ways.

The most serious problem of a more open foreign policy lies in congressional response. In Congress controversy can lead to delay, to inaction, to unworkable compromise, to missed opportunities. Minorities can obstruct; special interests can sometimes manipulate policy more easily on the Hill than in the executive branch. The accident of committee leadership and membership can skew policy away from the national interest to more parochial concerns. No one should be sanguine about these risks. The danger of getting hopelessly bogged down in a congressional quagmire is clear and present.

Nonetheless, I am prepared to take some losses in our foreign affairs if by doing so we can restore the fundamentals of representative democracy to our foreign policy. As Watergate demonstrates, democracy is too fragile to be divided into foreign and domestic affairs. We cannot give the President a free hand in the one without eroding the whole of the governmental system that all policy seeks to preserve.

**APPENDIX IX.—STATEMENT OF CONGRESSMAN ALBERT H. QUIE, PREPARED FOR PRESENTATION AT COMMITTEE'S HEARING OF DECEMBER 11, 1975**

**ALBERT H. QUIE**  
1st District, Minnesota

**COMMITTEES:**  
EDUCATION AND LABOR  
STANDARDS OF OFFICIAL  
CONDUCT

**WASHINGTON OFFICE:**  
2182 RAYBURN HOUSE OFFICE BUILDING  
205-225-2271

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

**COUNTRIES:**  
DAKOTA RICE  
DOODGE STEELE  
FILLMORE WABASHA  
GOODHUE WASHINGTON  
HOUSTON WISCONSIN  
OLMSTED

**DISTRICT OFFICES:**  
436 FIRST NATIONAL BANK BUILDING  
ROCHESTER, MINNESOTA 55901  
507-255-1364

**220 FEDERAL BUILDING**  
**FORT SNELLING**  
**ST. PAUL, MINNESOTA 55111**  
**612-725-3000**

December 19, 1975

The Honorable Otis G. Pike, Chairman  
Select Committee on Intelligence  
B-316 Rayburn Building  
Washington, D. C. 20515


Dear Mr. Chairman:

Enclosed is my statement which I wanted to make before the Select Committee on Intelligence meeting on December 11, 1975. I regret business on the House Floor prevented my personal appearance at the meeting.

I appreciate the opportunity to submit my recommendations to the Members of this committee in this manner.

With every good wish, I am

Sincerely yours,

  
**ALBERT H. QUIE**  
Member of Congress

AHQ/mcb

STATEMENT OF  
REP. ALBERT H. QUIE, 1st District, Minnesota  
BEFORE THE SELECT COMMITTEE ON INTELLIGENCE

December 11, 1975

I appreciate the opportunity to communicate my views to the Select Committee on Intelligence in regard to handling intelligence and sensitive national security information.

As a preface to my recommendations, let me state that I first became concerned about this matter when reading Eugene Kincaid's book entitled In Every War but One in the 1950's. It was an account of prisoner of war experiences in the Korean War but from it, I received the direct inference that our Government was contemplating official action and policies which were deceitful and unethical from the standpoint of our Judeo-Christian heritage.

Now I personally believe we should be engaged in covert intelligence gathering. Secondly, some information involving sensitive national security matters needs to be kept from public view, practically in the same way that a clergyman, an attorney, a newsman, and a medical doctor protects his relationship with his client.

Our problem presently stems from the fact that the abuse of this privilege in the Executive Branch goes back to the primary problem of integrity. An immoral act not only affects the subject, but also through time, has a debilitating effect on the perpetrator, which I believe has occurred in the corporate entity of the Executive Branch of the Federal government.

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It seems our Founding Fathers must have believed in original sin since they devised a government which could function without men reaching the Utopian state of perfection. Instead, they developed checks and balances to thwart anyone or any group from gaining absolute power.

Therefore, it seems to me that a Joint Committee on Intelligence should be established initially, for oversight purposes with legislative responsibilities assigned after two years of operation of the strictly oversight and advice-to-the-agency experience.

I believe that membership on a Joint Committee on Intelligence should be evenly divided between the House and the Senate and also equally between the two political parties. Each party has, through the years, had a slightly different point of view. By way of explanation, the members who are of the same political party as the Chief Executive tend to be less critical than those who are of the other party.

In order to keep members fresh with the newness of the task, but coupled with some experience, my recommendation would be that no one serve longer than two Congresses with half the Committee changing with each Congress. I recommend that they be nominated rather than selected by the respective caucuses, and that Senators of both parties stand for election before the entire Senate. Likewise the House members should be elected by the entire House of Representatives. In this way, the Joint Committee would be most truly representative of the composite of all people of this nation through their elected representatives.

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I believe the employees of the Joint Committee should be subject to the same process of investigation and certification following the same criteria that apply to the Executive Branch. The employees should also be subject to the same penalties.

During the initial two-year period having to do with classification of information and data, basic policy changes should be carried to the appropriate committee of the House and Senate. At the end of that period, rule changes should be proposed to the Congress as to what legislative responsibilities the Joint Committee should have.

Availability of information classified as secret or higher should be made available to any member of the House to the extent approved by the Joint Committee on Intelligence. If the Committee believes some information should not be for the eyes of other members of the Congress, it should have the authority to restrict access if approved by at least two thirds of the members of the Committee.

I believe that the Rules of the House and this Committee, should provide the procedure by which any member can receive such classified information. The Select Committee on Committees of the House of Representatives from the 93rd Congress chaired by Richard Bolling of Missouri, addressed this question beginning on page 93 and their recommendations for rule changes begin on page 97. In addition, I believe the rules should lay down the sanctions that any member found to have broken such rules should be denied access to any classified material for the remainder of time he serves in the Congress. The same should hold true for any member of the Joint Committee who may be found to have broken the Rules of the House or the Joint Committee on Intelligence.

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This year I have served on the House Committee on Standards of Official Conduct and was particularly interested in the Harrington case. While the Harrington case was dropped on a technicality, two things stand out in my mind. First, there is a need to up-date the rules of the Committee on Standards of Official Conduct in order to handle cases similar to this. Secondly, most Members recognized that Congressman Harrington signed the statement required by the House Committee on Armed Services, and he admitted under oath that he did impart the information he received to those who were not permitted to have it under the rules of the committee.

His statement is public information as printed in H.A.S.C. No. 94-12 "Inquiry into Matters regarding Classified Testimony Taken on April 22, 1974, concerning the CIA and Chile", the hearing before the Special Subcommittee on Intelligence of the Armed Services Committee on Wednesday, September 25, 1974.

When the Executive Branch betrays its trust, it will serve no useful purpose for a Member of Congress to break his trust in order to undo the wrong done by the Executive Branch.

When all is said and done, with adequate rules and a Joint Committee on Intelligence, we should develop a process by which a Member can bring a policy matter involving classified information before a closed session of the House to develop a binding agreement on it.

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